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15 Defendants Almont Ambulatory Surgery
Center, LLC, et al.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION
19

20 ALMONT AMBULATORY
SURGERY CENTER, LLC, a
21 California limited liability company, et
al.,

22 Plaintiffs,

23 v.

24 UNITEDHEALTH GROUP, INC.;
UNITED HEALTHCARE SERVICES,
25 INC., UNITED HEALTHCARE
INSURANCE COMPANY;
26 OPTUMINSIGHT, INC., and DOES 1
through 20,

27 Defendants.
28

Case No. 2:14-cv-03053-MWF(VBKx)
Magistrate Judge: Hon. Victor B.
Kenton

DISCOVERY MATTER

**DECLARATION OF BARBARA E.
TAYLOR IN SUPPORT OF
COUNTERCLAIM DEFENDANTS'
RESPONSE TO UNITED'S
MOTION FOR PROTECTIVE
ORDER**

Hearing

Date: Tuesday, December 2, 2014

Time: 10:00 a.m.

Courtroom: 590 (Roybal Courthouse)

1 UNITED HEALTHCARE SERVICES,
2 INC., UNITED HEALTHCARE
3 INSURANCE COMPANY;
4 OPTUMINSIGHT, INC.,

5 Counterclaim Plaintiffs,

6 v.

7 ALMONT AMBULATORY
8 SURGERY CENTER, LLC, a
9 California limited liability company; et
10 al.,

11 Counterclaim Defendants.
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Discovery Cutoff: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

DECLARATION OF BARBARA E. TAYLOR

I, Barbara E. Taylor, declare as follows:

1. I am an attorney licensed to practice in the State of California and am admitted in the Central District of California. I am a special counsel of the law of Sheppard, Mullin, Richter & Hampton LLP, counsel of record in this action for Counterclaim Defendants Michael Omid, M.D. and Julian Omid. I have personal knowledge of the facts alleged herein and could competently testify thereto, if called to do so.

2. On September 18, 2014, counsel for UnitedHealth Group, Inc., et al. ("United") emailed to counsel for Counterclaim Defendants a proposed stipulated protective order. Attached as Exhibit A hereto is a true and correct copy of United's email and proposed stipulated protective order. United's proposed subsection 7.4 would permit United to share confidential documents with any government agency or law enforcement personnel pursuant to formal or informal requests and without prior notice to Counterclaim Defendants.

3. On September 30, 2014, counsel for Counterclaim Defendants emailed to United a redline of the proposed stipulated protective order. Among the changes made was the elimination of subsection 7.4. Attached as Exhibit B hereto is a true and correct copy of that email and redline.

4. On October 16, 2014, a conference call was held between United's counsel—Bryan Westerfeld and Kirsten Schubert—and Counterclaim Defendants' counsel—Eric Chan and myself—regarding, among other things, the proposed stipulated protective order. During the call, United refused to eliminate subsection 7.4, merely offering to add the phrase "as required by law." Counterclaim Defendants' counsel expressed the view that the addition of this language, which was open to interpretation, did not adequately address their concerns, particularly the lack of notice to Counterclaim Defendants before confidential documents would

1 be produced. During the call, respective counsel "agreed to disagree" on subsection
2 7.4.

3 5. On October 20, 2014, Counterclaim Defendants' counsel sent a follow-
4 up email to United's counsel, expressing the understanding that counsel had "agreed
5 to disagree" on subsection 7.4 and that United "would draft a version [of the
6 stipulated protective order] that the parties could stipulate to that would also
7 memorialize the disagreement." Attached as Exhibit C hereto is a true and correct
8 copy of that email. Counterclaim Defendants' counsel also raised another concern
9 about the protective order's provision regarding documents produced by third
10 parties, which arose as the result of a dispute over United's service of third party
11 subpoenas (which is the subject of a pending motion to quash), and proposed
12 additional language for United's consideration. United did not respond to this email
13 or otherwise comment further regarding the protective order under negotiation.

14 6. On October 31, 2014, Counterclaim Defendants counsel received an
15 email from United's counsel initiating the procedure under Local Rule 37-2.2.
16 Attached as Exhibit D is a true and correct copy of this email (without attachments).

17 7. Attached as Exhibit E hereto is a true and correct copy of the Stipulated
18 Protective Order for Standard Litigation available on the website of the United
19 States District Court, Northern District of California.

20 8. Attached as Exhibit F hereto is a true and correct copy of the Protective
21 Order entered in *Downey Surgical Clinic, Inc. v. OptumInsight, Inc., et al.*, No.
22 CV09-05457 PSG (FFMx) (C.D. Cal. Aug. 14, 2014) ("*Downey Action*"). The
23 *Downey Action* and the instant action both involve United's efforts to avoid paying
24 out-of-network surgery centers. Attached as Exhibit G hereto is a true and correct
25 copy of the Stipulation re Protective Order filed in the *Downey Action*.

26 9. Attached as Exhibit H hereto is a true and correct copy of the Joint
27 Motion for a Protective Order filed in *DHR Int'l, Inc. v. Pollick*, No. 13-CV-01477
28 (D. Colo. Oct. 16, 2013).

1 10. Attached as Exhibits I and J hereto are true and correct copies of
2 Plaintiffs' Memorandum in Support of Its Version of a Stipulated Protective Order
3 and Defendant Virgin Mobile Latin America, Inc.'s Memorandum re Stipulated
4 Protective Order filed in *Case v. Tribe Mobile, Inc.*, No. 12-CV-00416 (D. Idaho
5 Dec. 21, 2012). Attached as Exhibit K is the Protective Order entered on January
6 14, 2013.

7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct.

9 Executed November 7, 2014, at Los Angeles, California.


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12 _____
13 Barbara E. Taylor
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EXHIBIT A

From: lind.meghan@dorsey.com [<mailto:lind.meghan@dorsey.com>]
Sent: Thursday, September 18, 2014 3:31 PM
To: Daron L. Tooch
Cc: Lucke.Steve@dorsey.com; Grant.Michelle@dorsey.com; zayed.rj@dorsey.com; bwesterfeld@walravenlaw.com; schubert.kirsten@dorsey.com
Subject: Almont v. United: Protective Order and ESI Plan

Daron,

For your review, I have attached a proposed protective order and ESI discovery plan in the above-referenced matter. Please let us know if you agree to the terms.

Thank you,
Meghan

Meghan E. Lind
Associate

.....
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.....

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALMONT AMBULATORY SURGERY
CENTER, LLC, a California limited
liability company, et al. ,

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC.;
UNITED HEALTHCARE SERVICES,
INC.; UNITED HEALTHCARE
INSURANCE COMPANY, INC.;
OPTUMINSIGHT, INC.; and DOES 1-
20,

Defendants.

Case No. 2:14-CV-03053-MWF (VBKx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Hon. Michael W. Fitzgerald

Magistrate Judge: Hon. Victor B. Kenton

Trial Date: None Set

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Proposed Protective Order does not entitle them to file confidential information under seal; Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

Based upon the Stipulation of the parties and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that:

1 **2. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
5 it is generated, stored or maintained) or tangible things that qualify for protection
6 under Federal Rule of Civil Procedure 26(c), including but not limited to patient
7 records and data, claim files, non-public financial records and data, employee or
8 personnel files, customer or client lists, confidential contracts, other healthcare-related
9 information protected by The Health Insurance Portability and Accountability Act of
10 1996, and all other information that the party in good faith believes will, if disclosed,
11 cause harm to the Producing Party's competitive position.

12 2.3 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
13 Items: subset of information (regardless of how it is generated, stored or maintained)
14 or tangible things that qualify for protection under Federal Rule of Civil Procedure
15 26(c) subject to limited disclosure as set forth in Paragraph 7.3, including but not
16 limited to trade secrets, United's proprietary claims-review and audit processes, and all
17 other non-public, proprietary financial, regulatory, or strategic information and data
18 that will, if disclosed, cause substantial competitive and economic harm to the
19 Producing Party.

20 2.4 Counsel (without qualifier): Outside Counsel of Record and House
21 Counsel (as well as their support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

25 2.5 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including,
27 among other things, testimony, transcripts, and tangible things), that are provided,
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1 produced or generated in relation to the claims and disputes in this matter or in
2 disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this
7 action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 2.8 Non-Party: any natural person, partnership, corporation,
10 association, or other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of
12 a party to this action but are retained to represent or advise a party to this action and
13 have appeared in this action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers,
16 directors, employees, consultants, retained experts, and Outside Counsel of Record
17 (and their support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL" or CONFIDENTIAL -- ATTORNEYS' EYES
26 ONLY."

27 2.14 Receiving Party: a Party that receives Disclosure or Discovery
28

1 Material from a Producing Party.

2 2.15 United: Collectively, UnitedHealth Group, Inc., United Healthcare
3 Services, Inc.; United Healthcare Insurance Company, Inc.; and OptumInsight, Inc.

4 **3. SCOPE**

5 The protections conferred by this Stipulation and Order cover not only Protected
6 Material (as defined above), but also (1) any information copied or extracted from
7 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
8 Material; and (3) any testimony, conversations, or presentations by Parties or their
9 Counsel that might reveal Protected Material. However, the protections conferred by
10 this Stipulation and Order do not cover the following information: (a) any information
11 that is in the public domain at the time of disclosure to a Receiving Party or becomes
12 part of the public domain after its disclosure to a Receiving Party as a result of
13 publication not involving a violation of this Order, including becoming part of the
14 public record through trial or otherwise; and (b) any information known to the
15 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
16 disclosure from a source who obtained the information lawfully and under no
17 obligation of confidentiality to the Designating Party. Any use of Protected Material at
18 trial shall be governed by a separate agreement or order.

19 **4. DURATION**

20 Even after final disposition of this litigation, the confidentiality obligations
21 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
22 in writing or a court order otherwise directs. Final disposition shall be deemed to be
23 the later of (1) dismissal of all claims and defenses in this action, with or without
24 prejudice; and (2) final judgment herein after the completion and exhaustion of all
25 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
26 for filing any motions or applications for extension of time pursuant to applicable law.

27 **5. DESIGNATING PROTECTED MATERIAL**

1 5.1 Exercise of Restraint and Care in Designating Material for Protection.

2 Each Party or Non-Party that designates information or items for protection
3 under this Order must take care to limit any such designation to specific material that
4 qualifies under the appropriate standards.

5 If it comes to a Designating Party's attention that information or items that it
6 designated for protection do not qualify for protection, that Designating Party must
7 promptly notify all other Parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations.

9 Except as otherwise provided in this Order (see, e.g., second paragraph of
10 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
11 Material that qualifies for protection under this Order must be clearly so designated
12 before the material is disclosed or produced. Designation in conformity with this
13 Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
17 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains
18 protected material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
20 by making appropriate markings in the margins).

21 (b) for testimony given in a deposition, confidentiality designations shall
22 be made either on the record or by written notice to the other party within 14 days of
23 receipt of the transcript. Unless otherwise agreed, depositions shall be treated as
24 "Confidential" during the 14-day period following receipt of the transcript. The
25 deposition of any witness (or any portion of such deposition) that encompasses
26 Confidential information shall be taken only in the presence of persons who are
27 qualified to have access to such information.
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1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the
4 legend "CONFIDENTIAL" or CONFIDENTIAL – ATTORNEYS' EYES ONLY." If
5 only a portion or portions of the information or item warrant protection, the Producing
6 Party, to the extent practicable, shall identify the protected portion(s).

7 **5.3 Inadvertent Failures to Designate.**

8 If timely corrected, an inadvertent failure to designate qualified information or
9 items does not, standing alone, waive the Designating Party's right to secure protection
10 under this Order for such material. Upon timely correction of a designation, the
11 Receiving Party must make reasonable efforts to assure that the material is treated in
12 accordance with the provisions of this Order.

13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 All challenges to confidentiality designations shall proceed under Local Rule
15 37-1 through Local Rule 37-4.

16 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

17 **7.1 Basic Principles.**

18 A Receiving Party may use Protected Material that is disclosed or produced by
19 another Party or by a Non-Party in connection with this case only for prosecuting,
20 defending, or attempting to settle this litigation or related litigation involving some or
21 all of the parties hereto. Such Protected Material may be disclosed only to the
22 categories of persons and under the conditions described in this Order. When the
23 litigation has been terminated, a Receiving Party must comply with the provisions of
24 Section 13 below.

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.
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1 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

2 Unless otherwise ordered by the court or permitted in writing by the Designating
3 Party, a Receiving Party may disclose any information or item designated
4 "CONFIDENTIAL" only to:

5 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to
7 disclose the information for this litigation;

8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
11 is reasonably necessary for this litigation and who have signed the "Acknowledgment
12 and Agreement to Be Bound" (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, mock
15 jurors, licensed private investigators retained by Counsel, and Professional Vendors to
16 whom disclosure is reasonably necessary for this litigation and who have signed the
17 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the "Acknowledgment and Agreement to
20 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
21 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
22 reveal Protected Material must be separately bound by the court reporter and may not
23 be disclosed to anyone except as permitted under this Stipulated Protective Order.

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

26 7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY"
27 Information or Items.
28

1 Unless otherwise ordered by the court or permitted in writing by the Designating
2 Party, a Receiving Party may disclose any information or item designated

3 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

4 (a) the Receiving Party's Outside Counsel of Record in this action;

5 (b) United's House Counsel in this action, which for purposes of this provision
6 only is limited to the following individuals: Steven Burstein, Linda Daugherty and
7 Carolyn Ham;

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
9 is reasonably necessary for this litigation and who have signed the "Acknowledgment
10 and Agreement to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, mock
13 jurors, licensed private investigators retained by Counsel, and Professional Vendors to
14 whom disclosure is reasonably necessary for this litigation and who have signed the
15 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Acknowledgment and Agreement to
18 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
19 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
20 reveal Protected Material must be separately bound by the court reporter and may not
21 be disclosed to anyone except as permitted under this Stipulated Protective Order.

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

24 7.4 Disclosure to Government Authorities

25 Nothing herein shall preclude disclosure of any Protected Information to
26 agencies or departments of the state, county, city or federal government, including law
27 enforcement personnel, or require notice of the same to the producing party.
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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**

2 If a Party is served with a valid subpoena or court order that compels disclosure
3 of any information or items designated in this action as "CONFIDENTIAL" or
4 "CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must promptly notify
5 in writing the party who caused the subpoena or order to issue that some or all of the
6 material covered by the subpoena or order is subject to this Protective Order. Such
7 notification shall include a copy of this Stipulated Protective Order.

8 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
9 **PRODUCED**

10 9.1 The terms of this Order are applicable to information produced by a Non-
11 Party in this action, or in relation to the claims and disputes therein, and designated as
12 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such
13 information produced by Non-Parties is protected by the remedies and relief provided
14 by this Order. This provision is applicable to production of documents or information
15 by non-parties in response to requests from persons or organizations seeking
16 information with respect to patients of Plaintiffs or persons or entities associated with
17 Plaintiffs pursuant to ERISA Section 104(b). Nothing in these provisions should be
18 construed as prohibiting a Non-Party from seeking additional protections.

19 9.2 In the event that a Party is required, by a valid discovery request, to
20 produce a Non-Party's confidential information in its possession, and the Party is
21 subject to an agreement with the Non-Party not to produce the Non-Party's
22 confidential information, then the Party shall:

23 (a) promptly notify in writing the Requesting Party and the Non-Party that
24 some or all of the information requested is subject to a confidentiality agreement
25 with a Non-Party;
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1 (b) promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this litigation, the relevant discovery request(s), and a
3 reasonably specific description of the information requested; and

4 (c) make the information requested available for inspection by the Non-
5 Party.

6 If the Non-Party fails to object or seek a protective order from this Court within
7 fourteen (14) days of receiving the notice and accompanying information, the
8 Receiving Party may produce the Non-Party's confidential information responsive to
9 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject to
11 the confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
13 of seeking protection in this court of its Protected Material.

14 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
16 Protected Material to any person or in any circumstance not authorized under this
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
18 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
19 all unauthorized copies of the Protected Material, (c) inform the person or persons to
20 whom unauthorized disclosures were made of all the terms of this Order, and (d)
21 request such person or persons to execute the "Acknowledgment and Agreement to Be
22 Bound" that is attached hereto as Exhibit A.

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
24 **PROTECTED MATERIAL**

25 In accordance with Federal Rule of Civil Procedure 26(b)(5)(B) and Federal
26 Rule of Evidence 502, any Party who inadvertently produces Discovery Material that
27 is privileged or otherwise immune from discovery shall, promptly upon discovery of
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1 such inadvertent production, so advise the Producing Party and request that the
2 Discovery Materials be returned. The Receiving Party shall return, sequester, or
3 destroy such inadvertently produced Discovery Materials, including all copies, within
4 five (5) business days of receiving such a written request. The Party returning such
5 inadvertently produced Discovery Materials may thereafter seek re-production of any
6 such Discovery Materials pursuant to applicable law.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief.

9 Nothing in this Order abridges the right of any person to seek its modification by
10 the court in the future.

11 12.2 Right to Assert Other Objections.

12 By stipulating to the entry of this Protective Order no Party waives any right it
13 otherwise would have to object to disclosing or producing any information or item on
14 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
15 waives any right to object on any ground to use in evidence of any of the material
16 covered by this Protective Order.

17 12.3 Filing Protected Material.

18 Without written permission from the Designating Party or a court order secured
19 after appropriate notice to all interested persons, a Party may not file in the public
20 record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Local Rule 79-5. Protected Material may only
22 be filed under seal pursuant to a court order authorizing the sealing of the specific
23 Protected Material at issue. Pursuant to Local Rule 79-5, a sealing order will issue
24 only upon a request establishing that the Protected Material at issue is privileged,
25 protectable as a trade secret, or otherwise entitled to protection under the law. If a
26 Receiving Party's request to file Protected Material under seal pursuant to Local Rule
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1 79-5 is denied by the court, then the Receiving Party may file the information in the
2 public record unless otherwise instructed by the court.

3 **13. FINAL DISPOSITION**

4 Within 60 days after the final disposition of this action, as defined in paragraph
5 4, each Receiving Party must return all Protected Material to the Producing Party or
6 destroy such material. As used in this subdivision, "all Protected Material" includes all
7 copies, abstracts, compilations, summaries, and any other format reproducing or
8 capturing any of the Protected Material. Whether the Protected Material is returned or
9 destroyed, the Receiving Party must submit a written certification to the Producing
10 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
11 deadline that (1) identifies (by category, where appropriate) all the Protected Material
12 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
13 any copies, abstracts, compilations, summaries or any other format reproducing or
14 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
15 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
16 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
17 expert reports, attorney work product, and consultant and expert work product, even if
18 such materials contain Protected Material. Any such archival copies that contain or
19 constitute Protected Material remain subject to this Protective Order as set forth in
20 Section 4 (DURATION).

21 IT IS SO ORDERED.

22
23
24 Dated:

Victor B. Kenton

United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Central District of California on [_____] in the case of
Almont Ambulatory Surgery Center, LLC, et al. v. UnitedHealth Group, Inc., et al.,
Case No: CV14-3053-MWF-VBK.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]

EXHIBIT B

Barbara Taylor

From: Eric Chan <echan@HEALTH-LAW.COM>
Sent: Tuesday, September 30, 2014 4:41 PM
To: 'lind.meghan@dorsey.com'
Cc: Daron L.Tooch; Peter J. Brachman; Stephen P. Lucke (lucke.steve@dorsey.com) (lucke.steve@dorsey.com); Grant.Michelle@dorsey.com; zayed.rj@dorsey.com; Bryan Westerfeld (bwesterfeld@walravenlaw.com); 'schubert.kirsten@dorsey.com' (schubert.kirsten@dorsey.com); Barbara Taylor
Subject: RE: Almont v. United: Protective Order and ESI Plan
Attachments: Almont ESI Discovery Plan (Removed Case) (HLB redline).docx; Almont Protective Order (Removed Case) (HLB redline).docx

Dear Meghan, et al.,

Attached please find Plaintiffs and Counterclaim Defendants' redline edits to the ESI and protective orders that you proposed a couple of weeks ago. Please let us know if these changes are acceptable to you.

Thank you,
Eric

Eric Chan
echan@health-law.com

HOOPER, LUNDY & BOOKMAN, P.C.

1875 Century Park East
Suite 1600
Los Angeles, CA 90067

Tel 310.551.8158
Fax 310.551.8181

<http://health-law.com/attorneys/eric-d-chan/>

To send attachments larger than 20 mb, please use our Hightail Dropbox at <https://www.hightail.com/u/HLB-Dropbox>. Please include recipient's name and your email when uploading an attachment. Thank you.

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From: lind.meghan@dorsey.com [mailto:lind.meghan@dorsey.com]
Sent: Thursday, September 18, 2014 3:31 PM
To: Daron L.Tooch
Cc: Lucke.Steve@dorsey.com; Grant.Michelle@dorsey.com; zayed.rj@dorsey.com; bwesterfeld@walravenlaw.com; schubert.kirsten@dorsey.com
Subject: Almont v. United: Protective Order and ESI Plan

Daron,

For your review, I have attached a proposed protective order and ESI discovery plan in the above-referenced matter. Please let us know if you agree to the terms.

Thank you,
Meghan

Meghan E. Lind
Associate

.....
DORSEY & WHITNEY LLP

Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
www.dorsey.com
P: 612.492.6704
F: 952.516.5742
.....

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALMONT AMBULATORY SURGERY
CENTER, LLC, a California limited
liability company, et al. ,

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC.;
UNITED HEALTHCARE SERVICES,
INC.; UNITED HEALTHCARE
INSURANCE COMPANY, INC.;
OPTUMINSIGHT, INC.; and DOES 1-
20,

Defendants.

Case No. 2:14-CV-03053-MWF (VBKx)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Hon. Michael W. Fitzgerald

Magistrate Judge: Hon. Victor B. Kenton

Trial Date: None Set

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Proposed Protective Order does not entitle them to file confidential information under seal; Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

Based upon the Stipulation of the parties and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that:

1 **2. DEFINITIONS**

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
3 information or items under this Order.

4 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how
5 it is generated, stored or maintained) or tangible things that qualify for protection
6 under Federal Rule of Civil Procedure 26(c), including but not limited to patient
7 records and data, claim files, non-public financial records and data, employee or
8 personnel files, customer or client lists, confidential contracts, other healthcare-related
9 information protected by The Health Insurance Portability and Accountability Act of
10 1996, and all other information that the party in good faith believes will, if disclosed,
11 cause harm to the Producing Party's competitive position.

12 2.3 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
13 Items: subset of information (regardless of how it is generated, stored or maintained)
14 or tangible things that qualify for protection under Federal Rule of Civil Procedure
15 26(c) subject to limited disclosure as set forth in Paragraph 7.3, that will, if disclosed,
16 cause substantial competitive and economic harm to the Producing Party. This
17 includes, including-but is not limited to, trade secrets, United's proprietary claims-
18 review and audit processes, and all other non-public, proprietary financial, regulatory,
19 or strategic information and data ~~that~~, to the extent that any of these categories of
20 information or tangible things will, if disclosed, cause substantial competitive and
21 economic harm to the Producing Party.

22 2.4 Counsel (without qualifier): Outside Counsel of Record and House
23 Counsel (as well as their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates information or
25 items that it produces in disclosures or in responses to discovery as
26 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."
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28

1 2.5 Disclosure or Discovery Material: all items or information, regardless of
2 the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are provided,
4 produced or generated in relation to the claims and disputes in this matter or in
5 disclosures or responses to discovery in this matter.

6 2.6 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel to
8 serve as an expert witness or as a consultant in this action.

9 2.7 House Counsel: attorneys who are employees of a party to this
10 action. House Counsel does not include Outside Counsel of Record or any other
11 outside counsel.

12 2.8 Non-Party: any natural person, partnership, corporation,
13 association, or other legal entity not named as a Party to this action.

14 2.9 Outside Counsel of Record: attorneys who are not employees of
15 a party to this action but are retained to represent or advise a party to this action and
16 have appeared in this action on behalf of that party or are affiliated with a law firm
17 which has appeared on behalf of that party.

18 2.10 Party: any party to this action, including all of its officers,
19 directors, employees, consultants, retained experts, and Outside Counsel of Record
20 (and their support staffs).

21 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this action.

23 2.12 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 2.13 Protected Material: any Disclosure or Discovery Material that is
28

1 designated as "CONFIDENTIAL" or CONFIDENTIAL – ATTORNEYS' EYES
2 ONLY."

3 2.14 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 2.15 United: Collectively, UnitedHealth Group, Inc., United Healthcare
6 Services, Inc.; United Healthcare Insurance Company, Inc.; and OptumInsight, Inc.

7 **3. SCOPE**

8 The protections conferred by this Stipulation and Order cover not only Protected
9 Material (as defined above), but also ~~(1) any information copied or extracted from~~
10 ~~Protected Material; (2) any and all copies, excerpts, summaries, or compilations of~~
11 ~~Protected Material; and (3) any testimony, conversations, or presentations by Parties or~~
12 ~~their Counsel that might reveal Protected Material.~~ However, the protections conferred
13 by this Stipulation and Order do not cover the following information: (a) any
14 information that is in the public domain at the time of disclosure to a Receiving Party
15 or becomes part of the public domain after its disclosure to a Receiving Party as a
16 result of publication not involving a violation of this Order, including becoming part of
17 the public record through trial or otherwise; and (b) any information known to the
18 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
19 disclosure from a source who obtained the information lawfully and under no
20 obligation of confidentiality to the Designating Party. Any use of Protected Material at
21 trial shall be governed by a separate agreement or order.

22 **4. DURATION**

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
25 in writing or a court order otherwise directs. Final disposition shall be deemed to be
26 the later of (1) dismissal of all claims and defenses in this action, with or without
27 prejudice; and (2) final judgment herein after the completion and exhaustion of all
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1 appeals, rehearings, remands, trials, or reviews of this action, including the time limits
2 for filing any motions or applications for extension of time pursuant to applicable law.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection
6 under this Order must take care to limit any such designation to specific material that
7 qualifies under the appropriate standards.

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection, that Designating Party must
10 promptly notify all other Parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations.

12 Except as otherwise provided in this Order (see, e.g., second paragraph of
13 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery
14 Material that qualifies for protection under this Order must be clearly so designated
15 before the material is disclosed or produced. Designation in conformity with this
16 Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
20 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains
21 protected material. If only a portion or portions of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
23 by making appropriate markings in the margins).

24 (b) for testimony given in a deposition, confidentiality designations shall
25 be made either on the record or by written notice to the other party within 14 days of
26 receipt of the transcript. Unless otherwise agreed, depositions shall be treated as
27 "Confidential" during the 14-day period following receipt of the transcript. The
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1 deposition of any witness (or any portion of such deposition) that encompasses
2 Confidential information shall be taken only in the presence of persons who are
3 qualified to have access to such information.

4 (c) for information produced in some form other than documentary and
5 for any other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information or item is stored the
7 legend "CONFIDENTIAL" or CONFIDENTIAL – ATTORNEYS' EYES ONLY." If
8 only a portion or portions of the information or item warrant protection, the Producing
9 Party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate.

11 If timely corrected, an inadvertent failure to designate qualified information or
12 items does not, standing alone, waive the Designating Party's right to secure protection
13 under this Order for such material. Upon timely correction of a designation, the
14 Receiving Party must make reasonable efforts to assure that the material is treated in
15 accordance with the provisions of this Order.

16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 All challenges to confidentiality designations shall proceed under Local Rule
18 37-1 through Local Rule 37-4.

19 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 7.1 Basic Principles.

21 A Receiving Party may use Protected Material that is disclosed or produced by
22 another Party or by a Non-Party in connection with this case only for prosecuting,
23 defending, or attempting to settle this litigation or related litigation involving some or
24 all of the parties hereto. Such Protected Material may be disclosed only to the
25 categories of persons and under the conditions described in this Order. When the
26 litigation has been terminated, a Receiving Party must comply with the provisions of
27 Section 13 below.
28

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

5 Unless otherwise ordered by the court or permitted in writing by the Designating
6 Party, a Receiving Party may disclose any information or item designated
7 "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to
10 disclose the information for this litigation;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
14 is reasonably necessary for this litigation and who have signed the "Acknowledgment
15 and Agreement to Be Bound" (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock
18 jurors, licensed private investigators retained by Counsel, and Professional Vendors to
19 whom disclosure is reasonably necessary for this litigation and who have signed the
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (f) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the "Acknowledgment and Agreement to
23 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
24 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
25 reveal Protected Material must be separately bound by the court reporter and may not
26 be disclosed to anyone except as permitted under this Stipulated Protective Order.
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1 (g) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the information.

3 7.3 Disclosure of "CONFIDENTIAL – ATTORNEYS' EYES ONLY"
4 Information or Items.

5 Unless otherwise ordered by the court or permitted in writing by the Designating
6 Party, a Receiving Party may disclose any information or item designated
7 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

8 (a) the Receiving Party's Outside Counsel of Record in this action;

9 (b) ~~United's House Counsel in this action, which for purposes of this provision~~
10 ~~only is limited to the following individuals: Steven Burstein, Linda Daugherty and~~
11 ~~Carolyn Ham;~~

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
13 is reasonably necessary for this litigation and who have signed the "Acknowledgment
14 and Agreement to Be Bound" (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, mock
17 jurors, licensed private investigators retained by Counsel, and Professional Vendors to
18 whom disclosure is reasonably necessary for this litigation and who have signed the
19 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is
21 reasonably necessary and who have signed the "Acknowledgment and Agreement to
22 Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered
23 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
24 reveal Protected Material must be separately bound by the court reporter and may not
25 be disclosed to anyone except as permitted under this Stipulated Protective Order.

26 (g) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information.
28

1 7.4 Disclosure to Government Authorities

2 ~~Nothing herein shall preclude disclosure of any Protected Information to~~
3 ~~agencies or departments of the state, county, city or federal government, including law~~
4 ~~enforcement personnel, or require notice of the same to the producing party.~~

5 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**

6 If a Party is served with a valid subpoena or court order that compels disclosure
7 of any information or items designated in this action as "CONFIDENTIAL" or
8 "CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must promptly notify
9 in writing the party who caused the subpoena or order to issue that some or all of the
10 material covered by the subpoena or order is subject to this Protective Order. Such
11 notification shall include a copy of this Stipulated Protective Order.

12 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
13 **PRODUCED**

14 9.1 The terms of this Order are applicable to information and/or tangible
15 things produced by a Non-Party in this action, ~~or in relation to the claims and disputes~~
16 ~~therein, if that Non-Party signs Exhibit A (Acknowledgement and Agreement to be~~
17 ~~Bound) and that Non-Party designates said information and/or tangible things and~~
18 ~~designated as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES~~
19 ~~ONLY;" pursuant to the terms of this Protective Order. Under such circumstances,~~
20 ~~Such information produced by Non-Parties is protected by the remedies and relief~~
21 ~~provided by this Order. This provision is applicable to production of documents or~~
22 ~~information by non-parties in response to requests from persons or organizations~~
23 ~~seeking information with respect to patients of Plaintiffs or persons or entities~~
24 ~~associated with Plaintiffs pursuant to ERISA Section 104(b). Nothing in these~~
25 ~~provisions should be construed as prohibiting a Non-Party from seeking additional~~
26 ~~protections.~~

1 9.2 In the event that a Party is required, by a valid discovery request, to
2 produce a Non-Party's confidential information in its possession, and the Party is
3 subject to an agreement with the Non-Party not to produce the Non-Party's
4 confidential information, then the Party shall:

5 (a) promptly notify in writing the Requesting Party and the Non-Party that
6 some or all of the information requested is subject to a confidentiality agreement
7 with a Non-Party;

8 (b) promptly provide the Non-Party with a copy of the Stipulated
9 Protective Order in this litigation, the relevant discovery request(s), and a
10 reasonably specific description of the information requested; and

11 (c) make the information requested available for inspection by the Non-
12 Party.

13 If the Non-Party fails to object or seek a protective order from this Court within
14 fourteen (14) days of receiving the notice and accompanying information, the
15 Receiving Party may produce the Non-Party's confidential information responsive to
16 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
17 Party shall not produce any information in its possession or control that is subject to
18 the confidentiality agreement with the Non-Party before a determination by the court.
19 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
20 of seeking protection in this court of its Protected Material.

21 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
25 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
26 all unauthorized copies of the Protected Material, (c) inform the person or persons to
27 whom unauthorized disclosures were made of all the terms of this Order, and (d)
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1 request such person or persons to execute the "Acknowledgment and Agreement to Be
2 Bound" that is attached hereto as Exhibit A.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

5 In accordance with Federal Rule of Civil Procedure 26(b)(5)(B) and Federal
6 Rule of Evidence 502, any Party who inadvertently produces Discovery Material that
7 is privileged or otherwise immune from discovery shall, promptly upon discovery of
8 such inadvertent production, so advise the Producing Party and request that the
9 Discovery Materials be returned. The Receiving Party shall return, sequester, or
10 destroy such inadvertently produced Discovery Materials, including all copies, within
11 five (5) business days of receiving such a written request. The Party returning such
12 inadvertently produced Discovery Materials may thereafter seek re-production of any
13 such Discovery Materials pursuant to applicable law.

14 **12. MISCELLANEOUS**

15 **12.1 Right to Further Relief.**

16 Nothing in this Order abridges the right of any person to seek its modification by
17 the court in the future.

18 **12.2 Right to Assert Other Objections.**

19 By stipulating to the entry of this Protective Order no Party waives any right it
20 otherwise would have to object to disclosing or producing any information or item on
21 any ground not addressed in this Stipulated Protective Order. Similarly, no Party
22 waives any right to object on any ground to use in evidence of any of the material
23 covered by this Protective Order.

24 **12.3 Filing Protected Material.**

25 Without written permission from the Designating Party or a court order secured
26 after appropriate notice to all interested persons, a Party may not file in the public
27 record in this action any Protected Material. A Party that seeks to file under seal any
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1 Protected Material must comply with Local Rule 79-5. Protected Material may only
2 be filed under seal pursuant to a court order authorizing the sealing of the specific
3 Protected Material at issue. Pursuant to Local Rule 79-5, a sealing order will issue
4 only upon a request establishing that the Protected Material at issue is privileged,
5 protectable as a trade secret, or otherwise entitled to protection under the law. If a
6 Receiving Party's request to file Protected Material under seal pursuant to Local Rule
7 79-5 is denied by the court, then the Receiving Party may file the information in the
8 public record unless otherwise instructed by the court.

9 **13. FINAL DISPOSITION**

10 Within 60 days after the final disposition of this action, as defined in paragraph
11 4, each Receiving Party must return all Protected Material to the Producing Party or
12 destroy such material. As used in this subdivision, "all Protected Material" includes all
13 copies, abstracts, compilations, summaries, and any other format reproducing or
14 capturing any of the Protected Material. Whether the Protected Material is returned or
15 destroyed, the Receiving Party must submit a written certification to the Producing
16 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
17 deadline that (1) identifies (by category, where appropriate) all the Protected Material
18 that was returned or destroyed and (2) affirms that the Receiving Party has not retained
19 any copies, abstracts, compilations, summaries or any other format reproducing or
20 capturing any of the Protected Material. Notwithstanding this provision, Counsel are
21 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
22 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
23 expert reports, attorney work product, and consultant and expert work product, even if
24 such materials contain Protected Material. Any such archival copies that contain or
25 constitute Protected Material remain subject to this Protective Order as set forth in
26 Section 4 (DURATION).

27 IT IS SO ORDERED.
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Dated:

Victor B. Kenton
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Central District of California on [_____] in the case of
Almont Ambulatory Surgery Center, LLC, et al. v. UnitedHealth Group, Inc., et al.,
Case No: CV14-3053-MWF-VBK.

I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]

EXHIBIT C

Barbara Taylor

From: Eric Chan <echan@HEALTH-LAW.COM>
Sent: Monday, October 20, 2014 10:12 AM
To: 'Bryan Westerfeld'; Barbara Taylor
Cc: 'schubert.kirsten@dorsey.com'
Subject: RE: Third Party Subpoena -- Proof of Service

Bryan and Kirsten,

Barbara and I have a follow-up on our conversation last Thursday regarding the revised protective order. As I recall, we agreed to disagree on Section 7.4, and you would draft a version that the parties could stipulate to that would also memorialize the disagreement over Section 7.4.

Kirsten, you also agreed to get confirmation that the three United in-house counsel listed in the draft protective order are primarily responsible for supervising litigation, and do not have business or regulatory functions.

After reflecting further on United's third party subpoenas, we are concerned that the protective order does not, in its present form, cover the designation of documents produced by third parties under the protective order. Thus, we propose the addition of a provision that permits any party to designate documents produced pursuant to a subpoena as Confidential or Highly Confidential-Attorneys' Eyes Only within X days (say 20 days) of those documents being produced. For this to work, we also believe that this requires a subpoenaing party to timely disclose/produce documents that were disclosed to it by any third party. Then other parties would have the additional X days to make any designations. Such designations would be subject to the PO's general provisions for contesting designations, of course.

Please let us know if that is acceptable to you or if you would like to set up another call to discuss.

Thanks,
Eric

From: Bryan Westerfeld [<mailto:bwesterfeld@walravenlaw.com>]
Sent: Thursday, October 16, 2014 4:50 PM
To: 'Barbara Taylor'
Cc: Eric Chan; schubert.kirsten@dorsey.com
Subject: Third Party Subpoena -- Proof of Service

Barbara,

Attached is the proof of service for the Wells Fargo subpoena. I am rounding up the proofs for the two other subpoenas and will forward them to you shortly.

Bryan

Bryan Westerfeld
Walraven & Westerfeld LLP
101 Enterprise, Suite 350
Aliso Viejo, California 92656
Telephone (949) 215-1997
Facsimile (949) 215-1999

www.walravenlaw.com

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EXHIBIT D

Barbara Taylor

From: Bryan Westerfeld <bwestefeld@walravenlaw.com>
Sent: Friday, October 31, 2014 4:44 PM
To: echan@HEALTH-LAW.COM; Barbara Taylor; Charles Kreindler
Cc: schubert.kirsten@dorsey.com; deslauriers.meghan@dorsey.com
Subject: Almont Ambulatory Surgery Center, LLC, et al. v. UnitedHealth Group, Inc., et al., Civil Action No. 2:14-cv-03053 (U.S.D.C., C.D. Cal.)
Attachments: Almont Joint Stipulation for Entry of a Protective Order-v1.docx; Decl of S. Wagley.pdf; Decl of BSW.pdf; Almont Stipulation_Ex. 7.pdf; Almont Stipulation_Ex. 8.pdf; Almont Stipulation_Ex. 1.pdf; Almont Stipulation_Ex. 2.pdf; Almont Stipulation_Ex. 3.pdf; Almont Stipulation_Ex. 4.pdf; Almont Stipulation_Ex. 5.pdf; Almont Stipulation_Ex. 6.pdf

Counsel,

Per Local Rule 37-2.2, attached is Defendants' portion of the Joint Stipulation and Declarations with Exhibits in support of their Motion Re: Protective Order. Plaintiffs-Counterclaim Defendants' portion of the Joint Stipulation and any Declarations and Exhibits to be offered by United in support of its position are due within seven days.

If you have any questions, please feel free to give us a call.

Bryan

Bryan Westerfeld
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EXHIBIT E

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

v. Plaintiff,

 Defendant.

Case No.

STIPULATED PROTECTIVE ORDER FOR
STANDARD LITIGATION

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

1 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
2 as their support staff).

3 2.4 Designating Party: a Party or Non-Party that designates information or items that it
4 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

5 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium
6 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
7 transcripts, and tangible things), that are produced or generated in disclosures or responses to
8 discovery in this matter.

9 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
10 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
11 consultant in this action.

12 2.7 House Counsel: attorneys who are employees of a party to this action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action
17 but are retained to represent or advise a party to this action and have appeared in this action on
18 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.10 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.12 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
27 "CONFIDENTIAL."

28 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a

1 Producing Party.

2 3. SCOPE

3 The protections conferred by this Stipulation and Order cover not only Protected Material (as
4 defined above), but also (1) any information copied or extracted from Protected Material; (2) all
5 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
6 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
7 However, the protections conferred by this Stipulation and Order do not cover the following
8 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
9 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
10 publication not involving a violation of this Order, including becoming part of the public record
11 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
12 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
13 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
14 Protected Material at trial shall be governed by a separate agreement or order.

15 4. DURATION

16 Even after final disposition of this litigation, the confidentiality obligations imposed by this
17 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
18 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
19 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
20 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
21 time limits for filing any motions or applications for extension of time pursuant to applicable law.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
24 Non-Party that designates information or items for protection under this Order must take care to
25 limit any such designation to specific material that qualifies under the appropriate standards. The
26 Designating Party must designate for protection only those parts of material, documents, items, or
27 oral or written communications that qualify – so that other portions of the material, documents,
28 items, or communications for which protection is not warranted are not swept unjustifiably within

1 the ambit of this Order.

2 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
3 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
4 encumber or retard the case development process or to impose unnecessary expenses and burdens on
5 other parties) expose the Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it designated for
7 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
8 that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
10 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
11 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
12 designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents, but
15 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
16 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
17 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents or materials available for inspection need not
20 designate them for protection until after the inspecting Party has indicated which material it would
21 like copied and produced. During the inspection and before the designation, all of the material made
22 available for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
23 identified the documents it wants copied and produced, the Producing Party must determine which
24 documents, or portions thereof, qualify for protection under this Order. Then, before producing the
25 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to each page
26 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
27 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
28 appropriate markings in the margins).

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
2 Designating Party identify on the record, before the close of the deposition, hearing, or other
3 proceeding, all protected testimony.

4 (c) for information produced in some form other than documentary and for any other
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
6 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a
7 portion or portions of the information or item warrant protection, the Producing Party, to the extent
8 practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the Designating Party's
11 right to secure protection under this Order for such material. Upon timely correction of a
12 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
13 accordance with the provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
18 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
19 confidentiality designation by electing not to mount a challenge promptly after the original
20 designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
22 by providing written notice of each designation it is challenging and describing the basis for each
23 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
24 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
25 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
26 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
27 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
28 Party must explain the basis for its belief that the confidentiality designation was not proper and

1 must give the Designating Party an opportunity to review the designated material, to reconsider the
2 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
3 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
4 has engaged in this meet and confer process first or establishes that the Designating Party is
5 unwilling to participate in the meet and confer process in a timely manner.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
7 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
8 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
9 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
10 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
11 competent declaration affirming that the movant has complied with the meet and confer
12 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
13 motion including the required declaration within 21 days (or 14 days, if applicable) shall
14 automatically waive the confidentiality designation for each challenged designation. In addition, the
15 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
16 good cause for doing so, including a challenge to the designation of a deposition transcript or any
17 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
18 competent declaration affirming that the movant has complied with the meet and confer
19 requirements imposed by the preceding paragraph.

20 The burden of persuasion in any such challenge proceeding shall be on the Designating
21 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
22 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
23 Unless the Designating Party has waived the confidentiality designation by failing to file a motion to
24 retain confidentiality as described above, all parties shall continue to afford the material in question
25 the level of protection to which it is entitled under the Producing Party's designation until the court
26 rules on the challenge.

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

28 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or

1 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
2 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
3 the categories of persons and under the conditions described in this Order. When the litigation has
4 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
5 DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a location and in a
7 secure manner that ensures that access is limited to the persons authorized under this Order.

8 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
9 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
10 information or item designated "CONFIDENTIAL" only to:

11 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
12 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
13 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is
14 attached hereto as Exhibit A;

15 (b) the officers, directors, and employees (including House Counsel) of the Receiving
16 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
17 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
19 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
20 to Be Bound" (Exhibit A);

21 (d) the court and its personnel;

22 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
23 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
24 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
26 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
27 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
28 deposition testimony or exhibits to depositions that reveal Protected Material must be separately

1 bound by the court reporter and may not be disclosed to anyone except as permitted under this
2 Stipulated Protective Order.

3 (g) the author or recipient of a document containing the information or a custodian or
4 other person who otherwise possessed or knew the information.

5 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
6 LITIGATION

7 If a Party is served with a subpoena or a court order issued in other litigation that compels
8 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
9 must:

10 (a) promptly notify in writing the Designating Party. Such notification shall include a
11 copy of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
13 other litigation that some or all of the material covered by the subpoena or order is subject to this
14 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
16 Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the subpoena
18 or court order shall not produce any information designated in this action as "CONFIDENTIAL"
19 before a determination by the court from which the subpoena or order issued, unless the Party has
20 obtained the Designating Party's permission. The Designating Party shall bear the burden and
21 expense of seeking protection in that court of its confidential material – and nothing in these
22 provisions should be construed as authorizing or encouraging a Receiving Party in this action to
23 disobey a lawful directive from another court.

24 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
25 LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-Party in this
27 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in
28 connection with this litigation is protected by the remedies and relief provided by this Order.

1 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
2 protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
4 Party's confidential information in its possession, and the Party is subject to an agreement with the
5 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
7 all of the information requested is subject to a confidentiality agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in
9 this litigation, the relevant discovery request(s), and a reasonably specific description of the
10 information requested; and

11 (3) make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court within 14
13 days of receiving the notice and accompanying information, the Receiving Party may produce the
14 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
15 seeks a protective order, the Receiving Party shall not produce any information in its possession or
16 control that is subject to the confidentiality agreement with the Non-Party before a determination by
17 the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
18 seeking protection in this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
22 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
23 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
24 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
25 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
26 Be Bound" that is attached hereto as Exhibit A.

27 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
28 MATERIAL

1 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
2 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
3 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
4 modify whatever procedure may be established in an e-discovery order that provides for production
5 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
6 parties reach an agreement on the effect of disclosure of a communication or information covered by
7 the attorney-client privilege or work product protection, the parties may incorporate their agreement
8 in the stipulated protective order submitted to the court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
11 its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
13 no Party waives any right it otherwise would have to object to disclosing or producing any
14 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
15 Party waives any right to object on any ground to use in evidence of any of the material covered by
16 this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the Designating Party or a
18 court order secured after appropriate notice to all interested persons, a Party may not file in the
19 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
20 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal
21 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant
22 to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that the
23 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
24 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant
25 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information
26 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

27 13. FINAL DISPOSITION

28 Within 60 days after the final disposition of this action, as defined in paragraph 4, each

1 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
2 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
4 the Protected Material is returned or destroyed, the Receiving Party must submit a written
5 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
6 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
7 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
8 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected
9 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
10 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
11 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
12 and expert work product, even if such materials contain Protected Material. Any such archival copies
13 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
14 Section 4 (DURATION).

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16
17 DATED: _____
18 Attorneys for Plaintiff

19
20 DATED: _____
21 Attorneys for Defendant

22
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24
25 DATED: _____
26 United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern
6 District of California on [date] in the case of _____ [insert formal name of the case and the
7 number and initials assigned to it by the court]. I agree to comply with and to be bound by all the
8 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
9 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I
10 will not disclose in any manner any information or item that is subject to this Stipulated Protective
11 Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even
14 if such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as
17 my California agent for service of process in connection with this action or any proceedings related
18 to enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____

EXHIBIT F

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 1 of 24 Page ID #:2482

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DOWNEY SURGICAL CLINIC, INC.,
TARZANA SURGERY CENTER,
INC. for Themselves and on Behalf of
All Others Similarly Situated

Plaintiffs,

vs.

OPTUMINSIGHT, INC., et al.

Defendants.

CASE NO. CV09-05457 PSG (FFMx)

**STIPULATED PROTECTIVE
ORDER**

Ctrm: E
Judge: Hon. Frederick F. Mumm

*NOTE CHANGES MADE BY THE COURT

THIS MATTER, having come before the Court on the Joint Stipulation of
Plaintiffs Downey Surgical Clinic, Inc. and Tarzana Surgery Center, Inc.
("Plaintiffs") and Defendants OptumInsight, Inc. (f/k/a Ingenix, Inc.), UnitedHealth
Group, Inc., United Healthcare Services, Inc., United Healthcare Insurance
Company, Best Buy Flexible Benefits Plan, Best Buy Co., Inc., Cingular Wireless
Medical Plan, AT&T Mobility LLC, Pacific Telesis Group Health Care Network
Plan, AT&T Medical Expense Plan, AT&T Corp., Cintas Corporation Employee
Health Benefit Plan, Cintas Corporation Group Insurance Plan, Cintas Corporation,
Ge Life Disability And Medical Plan, General Electric Company, J.C. Penney
Corporation, Inc. Health & Welfare Benefits Plan, J.C. Penney Corporation, Inc.

X:\USERS\CHANCELI\DESKTOP\UNITED-DOWNEY\DOWNNEY - UPDATED PROTECTIVE ORDER (PROPOSED ORDER).DOCX

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 2 of 24 Page ID #:2483

1 Benefits Administration Committee, Parker Hannifin Corporation Group Insurance
2 Plan, Parker Hannifin Corporation, Zale Corporation Benefits Plan, and Zale
3 Corporation, (collectively, "Defendants") requesting the Court to enter this
4 Stipulated Protective Order ("Order"), the parties having stipulated to all the terms
5 of this Order, and for good cause, it is hereby ORDERED AND ADJUDGED:

6 All documents or information produced in this Litigation shall be subject to
7 the terms and provisions set forth herein:

8 1. Definitions:

9 The following definitions shall apply to this Order:

10 a. "Confidential Information" is information that is not in the
11 public domain and contains employee information, financial data and information,
12 and any other information that may reasonably be characterized by a Producing
13 Party as intellectual property, a trade secret, or confidential or proprietary
14 information, including customer lists, rates structures, price lists, pricing data,
15 financial information, market studies, business plans, computer software and
16 programs, data technologies, systems, structures, and architectures, and sales and
17 marketing materials. For purposes of this Order, "trade secret" shall mean any
18 formula, compilation, program, plan, device, design, method, technique, process or
19 other information used in the Producing Party's business and for which
20 confidentiality has been reasonably maintained. "Proprietary" information shall
21 mean any information in which a party has a protectable interest, including, without
22 limitation, information regarding a party's finances, processes, products, services,
23 research and development, sales and marketing, strategies, and technologies.
24 Confidential Information will be designated as "Confidential" by the Producing
25 Party in one or more of the following ways: (1) information contained in any
26 document or part thereof may be so designated by marking the word
27 "CONFIDENTIAL" on the document or any copy of it delivered to the Parties or
28 their counsel or by giving written notice to the counsel, describing the document or

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 3 of 24 Page ID #:2484

1 part thereof either specifically or by category, as provided in paragraph 3 of this
2 Order; or (2) a Producing Party may designate information contained in an answer
3 to any question asked during an oral deposition as Confidential within 30 calendar
4 days of receipt of the deposition transcript by underlining the portions of the pages
5 that are confidential and stamping such pages "CONFIDENTIAL" as provided in
6 Paragraph 12 of this Order.

7 b. Certain documents may contain information that is so sensitive
8 that it should not be disclosed to any person other than outside counsel for the
9 Parties. Such information shall be produced on a "CONFIDENTIAL-Attorney Eyes
10 Only" basis and includes, but is not necessarily limited to the following:

11 1) trade secrets, customer lists, rates structures, price lists,
12 pricing data, market surveys, business plans, and
13 proprietary software that derives economic value, actual or
14 potential, from not being generally known to competitors
15 and potential competitors, that is the subject of reasonable
16 efforts to maintain its secrecy, and that is so competitively
17 sensitive that disclosure of the information justifies
18 imposing the requirement that no other parties or the
19 parties' inside counsel may view the information and for
20 which the Producing Party reasonably believes that it is
21 entitled to heightened protections from disclosure to
22 competitors or potential competitors under Fed. R. Civ. P.
23 26(c);

24 2) policies and practices with respect to provider contracting,
25 including, but not limited to, information regarding the
26 manner in which Defendants negotiate with providers,
27 Defendants' use of templates of provider contracts and
28

1 provider manuals, payment methods and payment rates,
2 the percentage of a physician's customary charges that
3 Defendants will reimburse for covered services, and
4 Defendants' claims practices and payment methodologies
5 set forth in provider manuals;

6
7 3) information relating to Defendants' claims processing
8 systems and applications, including, but not limited to,
9 information regarding various claims processing platforms
10 used by Defendants, the manner in which Defendants
11 respond to state prompt pay statutes and regulations, and
12 Defendants' policies and practices with respect to the type
13 of information providers or subscribers must submit in
14 order for their claims to be processed;

15 4) medical management policies and practices, including, but
16 not limited to, medical policies developed by Defendants
17 for use in making coverage determinations, third-party
18 guidelines, and local modifications, to the extent those
19 policies are not already publicly available;

20
21 5) financial information relating to Defendants' claims
22 processing, performance goals, and results; and

23 6) health care provider charge data, including, but not limited
24 to, CPT codes, dates of service, amounts charged, amounts
25 allowed, providers' zip codes, and "usual, customary and
26 reasonable" amounts.

27
28 c. "Confidential Health Information" shall constitute a subset of

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 5 of 24 Page ID #:2486

1 Confidential Information, and shall mean information supplied in any form, or any
2 portion thereof, that identifies an individual or subscriber in any manner and relates
3 to the past, present, or future care, services, or supplies relating to the physical or
4 mental health or condition of such individual or subscriber, the provision of health
5 care to such individual or subscriber, or the past, present, or future payment for the
6 provision of health care to such individual or subscriber. Confidential Health
7 Information may be found in, among other kinds of documents, medical bills, claims
8 forms, claim data, grievances or appeals, charge sheets, medical records, medical
9 charts, test results, notes, dictation, invoices, itemized billing statements, remittance
10 advice forms, explanations of benefits, checks, notices, and requests, as well as any
11 summaries or compilations of the information contained in these documents, to the
12 extent that such summaries or compilations themselves include Confidential Health
13 Information. Confidential Health Information is intended to encompass all
14 "protected health information" as such term is defined by the Standards for Privacy
15 of Individually Identifiable Health Information, 45 C.F.R. part 160.103,
16 promulgated pursuant to the Health Insurance Portability and Accountability Act
17 ("HIPAA"), as well as any patient health information protected by state law.

18 d. "Covered Entity" shall have the meaning as such term is defined
19 by the Standards for Privacy of Individually Identifiable Health Information, 45
20 C.F.R. part 160.103, promulgated pursuant to HIPAA.

21 e. "Documents" shall mean all originals, copies, and non-identical
22 copies, however produced or reproduced, of any printed, typed, handwritten,
23 graphic, electronic or otherwise recorded matter of whatever character, including,
24 but not limited to, files, correspondence, contracts, agreements, memoranda, notes,
25 forms, diaries, reports, interoffice communications, statements, transcripts,
26 affidavits, photographs, audiotape or videotape recordings, motion pictures, e-mail,
27 computer files, and any other documents and electronically stored information
28 contemplated by Fed. R. Civ. P. 34(a)(1)(A).

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 6 of 24 Page ID #:2487

1 f. "February 5, 2010 Stipulated Protective Order" shall refer to the
2 Stipulated Protective Order so-ordered by this Court on February 5, 2010. The
3 February 5, 2010 Stipulated Protective Order shall apply to all Documents produced
4 in this Litigation prior to the entry of this Order.

5 g. "Legend" as used herein shall mean a stamp or similar insignia
6 stating "CONFIDENTIAL," "CONFIDENTIAL-Attorney Eyes Only," or other
7 appropriate term or terms connoting the confidentiality of the document. When any
8 document is designated "CONFIDENTIAL" or "CONFIDENTIAL-Attorney Eyes
9 Only" pursuant to this Order, the Legend shall be affixed to the cover of such
10 document and to any page therein containing Confidential Information.

11 h. "Litigation" shall refer to the above-captioned case, including
12 any appeals through final judgment.

13 i. "Producing Party" shall mean any Party to the Litigation, or any
14 other person or entity producing documents, information, or other materials in the
15 Litigation, including any Covered Entity.

16 j. "Parties" collectively shall mean and include Plaintiffs and
17 Defendants. As used in this Order, the term "Parties" shall not include putative
18 class members or class members.

19 k. "Party" shall mean any one of the Parties.

20 2. Scope Of Application Of Order:

21 This Order shall govern all documents, testimony and other information and
22 materials generated or produced in response to any discovery conducted by any
23 Party to the Litigation pursuant to the Federal Rules of Civil Procedure and the local
24 rules of the United State District Court for the Central District of California that are
25 generated or produced after this Order is so-ordered by the Court. Further, this
26 Order shall govern all documents and materials containing Confidential Information
27 that are submitted in connection with a pleading, brief or other document filed with
28 this Court after this Order is so-ordered by the Court. This Order shall not govern

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 7 of 24 Page ID #:2488

1 documents produced prior to the date this Order is so-ordered by the Court. Nor
2 does this Order govern the use or admissibility of any evidence at trial or the
3 procedures for using such documents or information at trial. The Parties shall
4 confer and attempt to agree before any hearing, trial, or other proceeding on the
5 procedures to be included in a confidentiality order pursuant to which Confidential
6 Information may be introduced into evidence or otherwise used at such hearing,
7 trial, mediation, or other proceeding. Absent agreement, the parties shall request the
8 Court to issue an order governing the use of information in the context of such
9 proceedings. In addition, this Order shall govern all Confidential Information
10 produced by any Producing Party that is produced after this Order is so-ordered by
11 the Court, including without limitation a Covered Entity, in response to any
12 discovery conducted by any Party pursuant to the Federal Rules of Civil Procedure,
13 the rules of the Central District of California, and 45 C.F.R. part 164.512.

14 3. Designation As "Confidential Information":

15 A Producing Party may designate any document or portion thereof that
16 contains Confidential Information as "Confidential" pursuant to this Order by
17 affixing the Legend as provided under subparagraph 1(f) to any document
18 containing, or that the Producing Party believes contains, Confidential Information.
19 If, through inadvertence, a Producing Party produces any document or portion
20 thereof that contains Confidential Information but fails to designate the document as
21 either "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" pursuant
22 to this Order by affixing the appropriate Legend as provided under subparagraph
23 1(f), the Producing Party subsequently may designate the document as
24 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only." But in the
25 event a Producing Party produces voluminous documents for inspection only, the
26 Producing Party shall not need to stamp the documents in advance of the initial
27 inspection and instead the following procedures shall apply:

28 a. The Producing Party shall not be considered to have waived the

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 8 of 24 Page ID #:2489

1 confidential status of documents made available during such an initial inspection,
2 but not chosen by the inspecting Party for copying.

3 b. Thereafter, upon selection of specified documents for copying by
4 the inspecting Party, the Producing Party shall, within 30 calendar days and prior to
5 providing copies of the selected documents to the requesting Party, stamp each page
6 of such documents as may contain Confidential Information with either of the
7 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" designations.

8 c. A Producing Party also may designate documents as
9 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" by advising
10 counsel of record to whom the documents are to be produced, in writing, of the
11 Bates numbers of the documents that are designated Confidential pursuant to this
12 Order.

13 4. Disclosure Of Confidential Information:

14 Except as otherwise provided in this Order, Confidential Information may
15 only be disclosed to or examined by the following persons:

16 a. the Parties, including their current employees who are necessary
17 to assist counsel in this Litigation, the Parties' inside counsel, if any, and employees
18 of the Parties' inside counsel who are acting under the direction and control of such
19 counsel and who are necessary to assist such counsel in this Litigation;

20 b. the Parties' respective outside counsel and employees of the
21 Parties' outside counsel who are acting under the direction and control of such
22 counsel and who are necessary to assist such counsel in this Litigation;

23 c. vendors who are acting under the direction of the Parties'
24 counsel and who are necessary to assist such counsel in this Litigation;

25 d. independent consultants or experts retained in connection with
26 this Litigation by the Parties' counsel, but only to the extent necessary for the
27 prosecution or defense of the instant matter;

28 e. experts and/or other deponents or witnesses, but only to the

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 9 of 24 Page ID #:2490

1 extent necessary for the preparation of testimony or during testimony at a
2 proceeding in this Litigation;

3 f. stenographers or court reporters, but only to the extent necessary
4 to prepare records of sworn testimony in this Litigation; and

5 g. magistrate judges, judges, clerks, or other members or employees
6 of any court of competent jurisdiction over proceedings in or related to this
7 Litigation.

8 If a non-Producing Party concludes for the purpose of this Litigation that it
9 needs to disclose any of the Confidential Information to any person not specified in
10 this Paragraph 4, such party shall notify all other Parties, including the Producing
11 Party, and such notice shall state the identity of the person(s) that the non-Producing
12 Party needs to disclose to, and the reasons for such disclosure. The parties shall
13 confer in an effort to resolve the status of the subject information. If the Parties,
14 including any Producing Party, cannot agree to such release, counsel for the non-
15 Producing Party shall have the right to move for an order allowing disclosure to the
16 person(s) not specified in Paragraph 4 for good cause shown.

17 5. Disclosure of Confidential — Attorney Eyes Only Information:

18 Except as otherwise provided in this Order, Confidential Information
19 designated as “CONFIDENTIAL — Attorney Eyes Only” shall be subject to the
20 restrictions set forth in Paragraph 4 and further shall not be shown to the Parties or
21 to their inside counsel.

22 6. Disclosure of Confidential Health Information:

23 “Confidential Health Information” shall constitute a subset of Confidential
24 Information and shall be designated as “CONFIDENTIAL” and subject to all other
25 terms and conditions governing the treatment of Confidential Information, as set
26 forth in Paragraph 4. “Confidential Health Information” shall include, but is not
27 limited to, claims data, claim forms, grievances, appeals, or other documents or
28 records that contain any patient health information required to be kept confidential

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 10 of 24 Page ID #:2491

1 under any state or federal law, including 45 C.F.R. parts 160.103, promulgated
2 pursuant to HIPAA, and the following subscriber, patient, or member identifiers:

3 a. names;

4 b. all geographic subdivisions smaller than a State, including street
5 address, city, county, precinct, and zip code;

6 c. all elements of dates (except year) for dates directly related to an
7 individual, including birth date, admission date, discharge date, dates upon which
8 medical services were provided, age, and date of death;

9 d. telephone numbers;

10 e. fax numbers;

11 f. electronic mail addresses;

12 g. social security numbers;

13 h. medical record numbers;

14 i. health plan beneficiary numbers;

15 j. account numbers;

16 k. certificate/license numbers;

17 l. vehicle identifiers and serial numbers, including license plate
18 numbers;

19 m. device identifiers and serial numbers;

20 n. web universal resource locators ("URLs");

21 o. internet protocol ("IP") address numbers;

22 p. biometric identifiers, including finger and voice prints;

23 q. full face photographic images and any comparable images; and

24 r. any other unique identifying number, characteristic, or code; and

25 any other information the Producing Party knows could be used alone or in
26 combination with other information to identify an individual who is the subject of
27 information.

28 In addition to the other limitations on the use of Confidential Information as

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 11 of 24 Page ID #:2492

1 set forth above, the Producing Party may, but is not required to, redact the above
2 identifiers or take other suitable precautions in order to protect the privacy of its
3 members, subscribers, or patients, but only to the extent such redaction or other
4 precaution does not result in prejudice to another Party in the Litigation. All
5 documents produced by a Producing Party that contain Confidential Health
6 Information shall not be used by any Party to the Litigation for any purpose other
7 than in connection with this Litigation. This paragraph shall not prevent a
8 Producing Party from disclosing its own Confidential Health Information to any
9 person, including its counsel and their partners, associates, paralegals, and clerical
10 and litigation support personnel.

11 7. Copies:

12 All copies of any documents containing Confidential Information shall
13 constitute and be treated as Confidential as provided in this Order. Any person
14 making, or causing to be made, copies of any documents containing Confidential
15 information shall make certain that each such copy bears the appropriate Legend
16 pursuant to the requirements of this Order. Nothing herein shall preclude any
17 arrangement among the Parties by which documents or other materials may be
18 copied by the Producing Party.

19 8. Acknowledgement And Written Assurance:

20 Except as otherwise provided below, each person who is permitted to see
21 stamped Confidential Documents first shall be shown a copy of this Order and shall
22 sign an acknowledgment form that states:

- 23 a. the signatory has read and understands this Order;
24 b. the signatory understands the information contained in the
25 Documents has been designated as "CONFIDENTIAL;"
26 c. the signatory understands that the unauthorized disclosure of
27 information contained in any stamped Confidential Document may constitute
28 contempt of Court; and

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 12 of 24 Page ID #:2493

1 d. the signatory consents to the exercise of personal jurisdiction by
2 this Court for purposes of enforcement of this Order.

3 Persons permitted to see Confidential Information shall sign the
4 Acknowledgement and Written Assurance form annexed hereto as Exhibit 1. These
5 signed forms shall be maintained by the Party acquiring the signatures and shall be
6 produced to the Court for in camera inspection if any Party requests any such
7 inspection. As to any third-party contractors or vendors included in the list of
8 persons who must sign an Acknowledgement and Written Assurance form described
9 in Paragraph 4(c) above, an owner or manager of such contractor may sign on behalf
10 of his or her employees. No such signed Acknowledgment and Written Assurance
11 shall be required of the following persons: (i) Court personnel; (ii) any person or the
12 employee of any person or entity who produces the Confidential Information or who
13 is identified as a recipient on a document containing Confidential Information; or
14 (iii) outside counsel for the Parties and employees of the Parties' outside counsel
15 who are acting under the direction and control of such counsel and who are
16 necessary to assist such counsel in this Litigation.

17 A copy of each executed Acknowledgment and Written Assurance shall be
18 retained by counsel of record for the Party obtaining the Acknowledgement and
19 Written Assurance. A Producing Party may make such application to the Court for
20 disclosure of a copy of the executed Acknowledgement(s) and Written
21 Assurance(s), and the Court will grant such an application upon good cause shown,
22 except that a Party need not disclose a copy of an executed Acknowledgement and
23 Written Assurance if doing so would tend to reveal the identities of experts retained
24 by a Party, the disclosure of whom is not required by the Federal Rules of Civil
25 Procedure, unless ordered by the Court. This paragraph shall not prevent a
26 Producing Party from disclosing its own Confidential Information to any person,
27 including its counsel and their partners, associates, paralegals, and clerical and
28 litigation support personnel.

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 13 of 24 Page ID #:2494

1 9. Prohibition on Use Of Confidential Information Produced In This
2 Litigation In Other Actions:

3 Any documents or other information produced by any Producing Party in this
4 Litigation that has been designated as "CONFIDENTIAL" or "CONFIDENTIAL-
5 Attorney Eyes Only" shall be used solely for the purpose of this Litigation, which
6 includes discovery, motions, briefs, preparation for trial, trial, enforcements of court
7 orders or judgments, and on appeal, if any, and for no other purpose.

8 10. Subpoena Or Other Third-Party Request For Confidential Information
9 Produced In This Litigation:

10 In the event any person having possession, custody, or control of any
11 Confidential Information receives a subpoena or other compulsory process by any
12 court, administrative agency, legislative body commanding production of such
13 information, such person shall, unless otherwise precluded by law: (i) notify counsel
14 of record for the Producing Party within 48 hours by hand, e-mail or facsimile of the
15 request for Confidential Information; (ii) provide a copy of the subpoena or other
16 process or order requesting the production of Confidential Information to counsel of
17 record for the Producing Party; and (iii) cooperate with the Producing Party. The
18 Producing Party shall have the burden of defending against or objecting to such
19 request to the extent it seeks Confidential Information. The person receiving such
20 request shall not produce any Confidential Information required by the request prior
21 to the date specified in the subpoena, other process, or order for production.

22 11. Redacted Disclosures:

23 To the extent that any Producing Party discloses documents containing
24 Confidential Information that is not relevant to the Parties' claims or defenses, a
25 Producing Party may redact such Confidential Information and so indicate on the
26 document being produced. If redactions are made pursuant to this Section 11, the
27 Producing Party shall also disclose in writing information concerning the nature of
28 the redacted material without disclosing its contents. Information that may be

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 14 of 24 Page ID #:2495

1 redacted includes, but is not limited to, highly sensitive pricing or other information,
2 fee schedules, medical information, and private or personal information regarding
3 persons or entities other than the named Plaintiffs. If any of the Parties believes that
4 any information has been redacted improperly, the Parties first shall seek to resolve
5 any dispute over such redaction and, if the dispute is not resolved, the objecting
6 Party may pursue any remedies provided by the Federal Rules of Civil Procedure.
7 Any motion filed pursuant to the federal rules must comply with any applicable
8 Local Rules including Local Rule 37.

9 12. Designation Of Documents Produced By Third Parties:

10 Any Party may designate as "CONFIDENTIAL" any document that is
11 produced or disclosed without such designation by any third party within 30
12 calendar days of the production of such document, or such other time as may be
13 agreed, provided that such document contains Confidential Information of a
14 designating Party, in the following manner:

15 a. Parties to the Litigation may designate such document by
16 sending written notice of such designation, accompanied by copies of the designated
17 document bearing the Legend, to all other Parties in possession or custody of such
18 previously undesignated document or by reference to a Bates number of the
19 document. Within 30 calendar days of receipt of such notice, or such other time as
20 may be agreed, any Party receiving such notice and copy of the designated
21 document pursuant to this subparagraph shall return to the designating Party all
22 undesignated copies of such document in their custody or possession, or alternately
23 shall affix the Legend to all copies of such designated document in their custody or
24 possession.

25 b. Upon notice of designation pursuant to this Paragraph, the
26 Parties also shall: (i) make no further disclosure of such designated document or
27 information contained therein, except as allowed under this Order; (ii) take
28 reasonable steps to notify any persons who were provided copies of such designated

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 15 of 24 Page ID #:2496

1 document of the terms of this Order; and (iii) take reasonable steps to reclaim any
2 such designated document in the possession of any person not permitted access to
3 such information under the terms of this Order.

4 c. The Parties shall serve a copy of this Order simultaneously with
5 any discovery request made to a non-Party. For any discovery that was served on a
6 non-Party prior to the date of this Order, the Party who served the discovery shall
7 provide the non-Party with a copy of this Order within five days of the date this
8 Order is entered by the Court.

9 13. Designation Of Deposition Transcripts And Exhibits As Confidential:

10 a. At any depositions conducted in this Litigation of any person
11 within the categories set forth in paragraph 4 above and otherwise in accordance
12 with the provisions of this Order, the Parties may use, refer to, or mark as deposition
13 exhibits any documents designated as "CONFIDENTIAL" and all Confidential
14 Information contained therein or derived therefrom. Any documents designated as
15 "or "CONFIDENTIAL — Attorney Eyes Only" information that are marked as
16 deposition exhibits shall be sealed separately from the remainder of the deposition
17 transcript and exhibits. When a Party or Producing Party uses or refers to
18 Confidential —Attorney Eyes Only information at a deposition, the portion of the
19 deposition transcript that relates to such Confidential documents or information shall
20 be stamped as "CONFIDENTIAL — Attorney Eyes Only" and sealed separately
21 from the remainder of the transcript and shall be treated as Confidential — Attorney
22 Eyes Only under the provisions of this Order. No Party shall disclose or give
23 possession of documents designated as "CONFIDENTIAL — Attorney Eyes Only"
24 to any deponent other than as provided in paragraph 5 above.

25 b. Counsel will make a good faith effort to designate documents or
26 testimony as Confidential Information at the time of the deposition. Within 30
27 calendar days after receiving a deposition transcript, any Party, or any deposed
28 Producing Party may designate portions of the transcript, or exhibits thereto, as

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 16 of 24 Page ID #:2497

1 being as "CONFIDENTIAL." At any deposition conducted in this Litigation, the
2 Parties shall attempt in good faith preliminarily to identify and designate
3 Confidential testimony and exhibits without prejudice to their right to designate
4 other testimony or exhibits or to withdraw such designations after receipt of the
5 deposition transcript. Except as provided in subparagraph 12(a) above, Confidential
6 deposition testimony may be so designated by underlining the portions of the pages
7 that are confidential and stamping such pages as "CONFIDENTIAL." Until
8 expiration of the thirty day calendar day period, the entire deposition transcript, and
9 all exhibits thereto, shall be treated as "CONFIDENTIAL — Attorney Eyes Only"
10 under the provisions of this Order. If a timely Confidential designation is made, the
11 Confidential portions of the deposition transcript, together with any deposition
12 exhibits designated as "CONFIDENTIAL," shall be sealed separately from the
13 portions of the deposition transcript and exhibits not so marked, and shall be treated
14 as Confidential under the provisions of this Order.

15 14. Receipt Of Confidential Information From Independent Sources:

16 With respect to any document that has been produced in this Litigation and
17 designated as "CONFIDENTIAL" by a Producing Party, should any Party claim to
18 have received the document from another source without any restriction of
19 confidentiality and should that Party seek to be relieved of the confidentiality
20 restrictions of this Order with respect to that document, the Party first shall seek the
21 consent of the Producing Party, and if applicable, other Parties. If the Parties cannot
22 agree as to whether the document(s) should be excluded from this Order, the Parties
23 shall submit the matter to the Court for resolution. Any such "submission" must
24 comply with the Local Rules, including Local Rule 37.

25 15. Inadvertent Failure To Designate Information As Confidential:

26 Inadvertent failure to designate information as "CONFIDENTIAL" or
27 "CONFIDENTIAL — Attorney Eyes Only," or to do so within 30 calendar days,
28 may be remedied at any time by supplemental written notice given by the Producing

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 17 of 24 Page ID #:2498

1 Party. Upon receipt of such notification, all information so designated shall be
2 subject to this Order as if it had been initially so designated, and the Parties shall (a)
3 not make any further disclosure or communication of all information so designated
4 (the "Redesignated Information") except as provided for in this Order, (b) take
5 reasonable steps to notify any persons known to have possession of any
6 Redesignated Information of the effect of the new designation under this Order, and
7 (c) promptly endeavor to procure all copies of the Redesignated Information from
8 any persons known to have possession of Redesignated Information who are not
9 entitled to receipt under Paragraphs 4 and 5 above. The Parties further shall make a
10 reasonable good-faith effort to insure that any analyses, memoranda, or notes that
11 were generated based upon such Redesignated Information are immediately treated
12 in accordance with the new designation.

13 16. Inadvertent Production:

14 If information subject to a claim of attorney-client privilege, attorney work
15 product, or any other ground on which the production of such information should
16 not be made to any Party nevertheless is inadvertently produced in this Litigation by
17 any Producing Party, such production shall not prejudice, or otherwise constitute a
18 waiver of, or estoppel as to, any claim of privilege, attorney work product, or other
19 ground for withholding production to which the Producing Party would be entitled.
20 If a claim of inadvertent production is made with respect to information then in the
21 custody of another Party, such Party promptly shall return such information to the
22 Producing Party. Where the information produced is electronically stored, such
23 Party shall sequester the information and not use it for any purpose in litigation until
24 the claim of inadvertent production is resolved. The Party returning and/or
25 sequestering such material may pursue any remedy provided by the Federal Rules of
26 Civil Procedure. Any motion filed pursuant to the federal rules must comply with
27 all applicable Local Rules, including Rule 37. Any such motion shall not assert as a
28 ground for compelling production the fact or circumstance of the inadvertent

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 18 of 24 Page ID #:2499

1 production.

2 17. Filing Of Confidential Information Under Seal:

3 Any Party wishing to file a document or paper containing Confidential
4 Information shall endeavor to redact or otherwise exclude from the filing any
5 Confidential Information not directly pertinent to that Party's filing. Any request to
6 seal "CONFIDENTIAL" and "CONFIDENTIAL — Attorney Eyes Only"
7 information that is directly pertinent to that Party's filing shall be made in
8 accordance with Local Rule 79-5 of the United States District Court for the Central
9 District of California, and shall seek to file under seal only those portions of filings
10 containing documents stamped "CONFIDENTIAL" or "CONFIDENTIAL —
11 Attorney Eyes Only" material. Where reasonably possible, the Parties shall agree to
12 redact documents or stipulate to facts in order to avoid the disclosure of Confidential
13 Information and the need to file documents under seal. A designation as
14 "CONFIDENTIAL" by a Party or Producing Party under this Order alone is not a
15 sufficient basis to seal the information submitted in connection with a request for
16 relief from the Court.

17 18. Use Of Confidential Information By A Party In These Proceedings:

18 Notwithstanding any other provision of this Order, the Parties shall confer
19 and attempt to agree before any Court trial or hearing on the procedures to be
20 included in a protective order pursuant to which "CONFIDENTIAL" or
21 "CONFIDENTIAL — Attorney Eyes Only" material may be used or introduced into
22 evidence at such trial or hearing. Upon reaching agreement, the Parties shall give
23 notice of the terms of such agreement to each third party producing Confidential
24 Information which may be used or introduced at such trial or hearing. Because it
25 would affect the public availability of material used at a trial or hearing, any such
26 agreement will be effective only upon Court approval. Absent agreement among the
27 Parties, any Party upon reasonable notice to all third parties producing Confidential
28 Information which may be used or introduced at such trial or hearing may move the

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 19 of 24 Page ID #:2500

1 Court to issue an order governing the use of Confidential Information at a trial or
2 hearing.

3 19. Objections To Confidentiality Designations:

4 If any Party in this Litigation desires to have a Confidentiality designation
5 removed, counsel for such Party shall first request in writing, or pursuant to the
6 terms of any stipulation for electronic service that is in place at the time, that the
7 Producing Party remove the Confidentiality designation, and shall state the reasons
8 for its request. If the Producing Party withdraws its designation of such
9 information, the Producing Party shall express that withdrawal by written notice
10 submitted to the Parties. If the Producing Party refuses to withdraw the designation,
11 it must state its reasons in a writing served by hand, by facsimile, or by electronic
12 means, within five business days of receiving the request. Thereafter, the Parties
13 shall meet and confer to attempt to resolve the dispute. If an agreement cannot be
14 reached, the requesting Party may petition the court to re-designate the Confidential
15 Information. Any such petition must comply with Local Rule 37. If a designation is
16 challenged, the Parties agree that the mere designation of a document as
17 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" cannot be used
18 to support or detract from the position that a document should be so designated. The
19 Parties shall continue to treat the information as Confidential Information unless and
20 until the application to re-designate is granted and the time for any interlocutory
21 appeal or emergency review has expired. Nothing in this paragraph shall be
22 construed to change the applicable burden of establishing whether or not any
23 particular document is entitled to confidential treatment. Nothing in this Order shall
24 abridge the right of any Producing Party to seek appropriate judicial review or relief
25 in respect to any ruling that the Court may make.

26 20. No Oral Waivers:

27 The Parties may waive the confidentiality provisions of this Order as to any
28 Confidential Information only by explicit written waiver. Such waiver shall not

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 20 of 24 Page ID #:2501

1 result in a waiver of the confidential status of any other information deemed
2 Confidential pursuant to this Order.

3 21. Effect Of Order:

4 This Order shall remain in full force and effect indefinitely until modified,
5 superseded, or terminated by executed written agreement of the Parties or by order
6 of the Court. This Court shall retain continuing jurisdiction beyond the conclusion
7 of this Litigation, including, without limitation, during any appeal, to enforce the
8 provisions of this Order pursuant to its contempt powers and with all other powers
9 provided for in this Order.

10 22. Amendments:

11 This Order may be amended by the agreement of counsel for the Parties in the
12 form of a written amendment to the Order. Such proposed modifications shall be
13 submitted to the Court for approval.

14 23. Return Or Destruction Of Confidential Information Following
15 Conclusion Of Litigation:

16 Within 30 days after the conclusion of this Litigation by final judgment not
17 subject to appeal or by settlement, all documents or other items constituting or
18 containing Confidential Information that are in the possession, custody, or control of
19 any person other than the Producing Party shall either be returned to the Producing
20 Party or destroyed at the election of the Producing Party. Provided, however, that
21 Plaintiffs' counsel, specifically Hooper, Lundy & Bookman, P.C. ("HLB"), in
22 accordance with its standard policies and practices to retain its case file and the
23 documents contained therein in the unlikely event a malpractice lawsuit is filed
24 against it, may retain a single copy of each document or item of Confidential
25 Information for at least two years as a necessary precaution.

26 All documents or other items constituting or containing Confidential
27 Information retained by HLB for this limited time period will remain subject to this
28 Order. HLB will be obligated to notify the Producing Party within 14 days of being

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 21 of 24 Page ID #:2502

1 served as a defendant in a lawsuit in which the Confidential Information appears
2 reasonably likely to be relevant, and will not disclose or produce the Confidential
3 Information, or allow it to be disclosed or produced, in the lawsuit unless and until a
4 court denies the Producing Party's application, if any, to have the Confidential
5 Information protected from disclosure, or unless and until the Producing Party
6 notifies HLB that it has no objection to the Confidential Information being disclosed
7 or produced in the lawsuit. Subject to HLB's ability to retain a single copy of
8 documents and items containing Confidential Information in accordance with its
9 standard policies and practices, within 30 days after the conclusion of this
10 Litigation, each Party shall provide an affidavit to each Producing Party attesting
11 that all documents or other items constituting or containing Confidential Information
12 produced in this Litigation were returned or destroyed *in toto*. Counsel for all
13 Parties may retain copies of all documents that that have been filed with the Court,
14 depositions, and all exhibits thereto. In addition, counsel for any Party may retain
15 information that they determine in good faith to constitute work product, including
16 but not limited to, documents relied upon in preparing motions, briefs, trial
17 notebooks, and preparing for depositions.

18 24. Notices:

19 All notices that this Order requires to be sent to a particular Party shall be sent
20 via e-mail and mailed via overnight mail or regular mail to counsel for that Party at
21 the address listed in the signature block below.

22 25. No Admission:

23 Nothing in this Order constitutes an admission or agreement that any
24 document or information, or any testimony relating to such document or
25 information, is or would be subject to discovery or is admissible as evidence in this
26 case or any other proceeding.

27 26. Continued Use of Confidential Information:

28 The restrictions set forth in this Order shall not be construed as preventing a

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 22 of 24 Page ID #:2503

1 non-producing party from continuing to use any Confidential Information known to
2 or used by it prior to the filing of this Litigation and that subsequently became part
3 of the public domain through no act or omission of the non-producing party.

4
5 **IT IS SO ORDERED.**

6
7 **Dated: August 14, 2014**

8 **/S/ Frederick F. Mumm**

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10 **FREDERICK F. MUMM**
11 **United States Magistrate Judge**

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Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 23 of 24 Page ID #:2504

EXHIBIT 1

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

DOWNEY SURGICAL CLINIC, INC.,
TARZANA SURGERY CENTER,
INC. for Themselves and on Behalf of
All Others Similarly Situated,

Plaintiffs,

vs.

OPTUMINSIGHT, INC., et al.,
Defendants.

CASE NO. CV09-05457 PSG (FFMx)

**ACKNOWLEDGMENT AND
WRITTEN ASSURANCE TO
PROTECT CONFIDENTIAL
INFORMATION**

I hereby acknowledge that I, _____
have been provided with a copy of the Stipulated Protective Order entered in the
above-captioned litigation, a copy of which is annexed hereto and incorporated
herein by reference.

I further acknowledge that I have read the Stipulated Protective Order and
agree to be bound by its terms and conditions and limitations regarding the review
and disclosure of Confidential Information in this Litigation. I understand that all
documents, material, or information that is subject to the Stipulated Protective Order
may be used only for purposes of the conduct of this Litigation and for no other
purpose. I understand that the information contained in Documents marked as
"CONFIDENTIAL" has been designated as confidential and that the unauthorized
disclosure of Documents marked "CONFIDENTIAL" or of information contained
therein, may constitute contempt of Court.

CV09-05457 PSG (C1x)
1. [PROPOSED] STIPULATED PROTECTIVE ORDER
MAJESTIC CHANCERY COURT - DOWNEY - DOWNEY - UPDATED PROTECTIVE ORDER (PROPOSED ORDER).DOCX

Case 2:09-cv-05457-PSG-FFM Document 188 Filed 08/14/14 Page 24 of 24 Page ID #:2505

1 I also submit to the jurisdiction of the United States District Court for the
2 Central District of California for the limited purpose of any action to enforce the
3 Stipulated Protective Order and acknowledge that any violation may be punishable
4 by contempt of Court.

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6 DATED: _____, 20____

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Name: _____

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EXHIBIT G

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 1 of 27 Page ID #:2430

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*= See Attachment A hereto.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DOWNEY SURGICAL CLINIC, INC.,
TARZANA SURGERY CENTER,
INC. for Themselves and on Behalf of
All Others Similarly Situated

Plaintiffs,

vs.

OPTUMINSIGHT, INC.,
UNITEDHEALTH GROUP, INC.,
UNITED HEALTHCARE SERVICES,
INC., UNITED HEALTHCARE
INSURANCE COMPANY, For
Themselves; BEST BUY FLEXIBLE
BENEFITS PLAN, BEST BUY CO.,
INC., CINGULAR WIRELESS
MEDICAL PLAN, AT&T MOBILITY
LLC, PACIFIC TELESIS GROUP

CASE NO. CV09-05457 PSG (CTX)

**STIPULATION RE PROTECTIVE
ORDER**

Ctrm: 880

Judge: Hon. Philip S. Gutierrez

CV 09-05457 PSG (CTX)
STIPULATION RE PROTECTIVE ORDER

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 2 of 27 Page ID #:2431

1 HEALTH CARE NETWORK PLAN,
2 AT&T MEDICAL EXPENSE PLAN,
3 AT&T CORP., CINTAS
4 CORPORATION EMPLOYEE
5 HEALTH BENEFIT PLAN, CINTAS
6 CORPORATION GROUP
7 INSURANCE PLAN, CINTAS
8 CORPORATION, GE LIFE
9 DISABILITY AND MEDICAL PLAN,
10 GENERAL ELECTRIC COMPANY,
11 J.C. PENNEY CORPORATION, INC.
12 HEALTH & WELFARE BENEFITS
13 PLAN, J.C. PENNEY
14 CORPORATION, INC. BENEFITS
15 ADMINISTRATION COMMITTEE,
16 PARKER HANNIFIN
17 CORPORATION GROUP
18 INSURANCE PLAN, PARKER
19 HANNIFIN CORPORATION, ZALE
20 CORPORATION BENEFITS PLAN,
21 ZALE CORPORATION; DOES 1-10,
22
23 Defendants.
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13 The Plaintiffs Downey Surgical Clinic, Inc. and Tarzana Surgery Center, Inc.
14 ("Plaintiffs") and Defendants OptumInsight, Inc. (f/k/a Ingenix, Inc.), UnitedHealth
15 Group, Inc., United Healthcare Services, Inc., United Healthcare Insurance
16 Company, Best Buy Flexible Benefits Plan, Best Buy Co., Inc., Cingular Wireless
17 Medical Plan, AT&T Mobility LLC, Pacific Telesis Group Health Care Network
18 Plan, AT&T Medical Expense Plan, AT&T Corp., Cintas Corporation Employee
19 Health Benefit Plan, Cintas Corporation Group Insurance Plan, Cintas Corporation,
20 Ge Life Disability And Medical Plan, General Electric Company, J.C. Penney
21 Corporation, Inc. Health & Welfare Benefits Plan, J.C. Penney Corporation, Inc.
22 Benefits Administration Committee, Parker Hannifin Corporation Group Insurance
23 Plan, Parker Hannifin Corporation, Zale Corporation Benefits Plan, and Zale
24 Corporation, (collectively, "Defendants"), having stipulated to all the terms of this
25 Stipulated Protective Order ("Order"), jointly request and agree that the Court enter,
26 for good cause, this Order as follows:
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Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 3 of 27 Page ID #:2432

1 All documents or information produced in this Litigation shall be subject to
2 the terms and provisions set forth herein:

3 1. Definitions:

4 The following definitions shall apply to this Order:

5 a. "Confidential Information" is information that is not in the
6 public domain and contains employee information, financial data and information,
7 and any other information that may reasonably be characterized by a Producing
8 Party as intellectual property, a trade secret, or confidential or proprietary
9 information, including customer lists, rates structures, price lists, pricing data,
10 financial information, market studies, business plans, computer software and
11 programs, data technologies, systems, structures, and architectures, and sales and
12 marketing materials. For purposes of this Order, "trade secret" shall mean any
13 formula, compilation, program, plan, device, design, method, technique, process or
14 other information used in the Producing Party's business and for which
15 confidentiality has been reasonably maintained. "Proprietary" information shall
16 mean any information in which a party has a protectable interest, including, without
17 limitation, information regarding a party's finances, processes, products, services,
18 research and development, sales and marketing, strategies, and technologies.
19 Confidential Information will be designated as "Confidential" by the Producing
20 Party in one or more of the following ways: (1) information contained in any
21 document or part thereof may be so designated by marking the word
22 "CONFIDENTIAL" on the document or any copy of it delivered to the Parties or
23 their counsel or by giving written notice to the counsel, describing the document or
24 part thereof either specifically or by category, as provided in paragraph 3 of this
25 Order; or (2) a Producing Party may designate information contained in an answer
26 to any question asked during an oral deposition as Confidential within 30 calendar
27 days of receipt of the deposition transcript by underlining the portions of the pages
28

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 4 of 27 Page ID #:2433

1 that are confidential and stamping such pages "CONFIDENTIAL" as provided in
2 Paragraph 12 of this Order.

3 b. Certain documents may contain information that is so sensitive
4 that it should not be disclosed to any person other than outside counsel for the
5 Parties. Such information shall be produced on a "CONFIDENTIAL-Attorney Eyes
6 Only" basis and includes, but is not necessarily limited to the following:

7 1) trade secrets, customer lists, rates structures, price lists,
8 pricing data, market surveys, business plans, and
9 proprietary software that derives economic value, actual or
10 potential, from not being generally known to competitors
11 and potential competitors, that is the subject of reasonable
12 efforts to maintain its secrecy, and that is so competitively
13 sensitive that disclosure of the information justifies
14 imposing the requirement that no other parties or the
15 parties' inside counsel may view the information and for
16 which the Producing Party reasonably believes that it is
17 entitled to heightened protections from disclosure to
18 competitors or potential competitors under Fed. R. Civ. P.
19 26(c);

20 2) policies and practices with respect to provider contracting,
21 including, but not limited to, information regarding the
22 manner in which Defendants negotiate with providers,
23 Defendants' use of templates of provider contracts and
24 provider manuals, payment methods and payment rates,
25 the percentage of a physician's customary charges that
26 Defendants will reimburse for covered services, and
27 Defendants' claims practices and payment methodologies
28 set forth in provider manuals;

- 1 3) information relating to Defendants' claims processing
2 systems and applications, including, but not limited to,
3 information regarding various claims processing platforms
4 used by Defendants, the manner in which Defendants
5 respond to state prompt pay statutes and regulations, and
6 Defendants' policies and practices with respect to the type
7 of information providers or subscribers must submit in
8 order for their claims to be processed;
- 9 4) medical management policies and practices, including, but
10 not limited to, medical policies developed by Defendants
11 for use in making coverage determinations, third-party
12 guidelines, and local modifications, to the extent those
13 policies are not already publicly available;
- 14 5) financial information relating to Defendants' claims
15 processing, performance goals, and results; and
- 16 6) health care provider charge data, including, but not limited
17 to, CPT codes, dates of service, amounts charged, amounts
18 allowed, providers' zip codes, and "usual, customary and
19 reasonable" amounts.

20 c. "Confidential Health Information" shall constitute a subset of
21 Confidential Information, and shall mean information supplied in any form, or any
22 portion thereof, that identifies an individual or subscriber in any manner and relates
23 to the past, present, or future care, services, or supplies relating to the physical or
24 mental health or condition of such individual or subscriber, the provision of health
25 care to such individual or subscriber, or the past, present, or future payment for the
26 provision of health care to such individual or subscriber. Confidential Health
27 Information may be found in, among other kinds of documents, medical bills, claims
28 forms, claim data, grievances or appeals, charge sheets, medical records, medical

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 6 of 27 Page ID #:2435

1 charts, test results, notes, dictation, invoices, itemized billing statements, remittance
2 advice forms, explanations of benefits, checks, notices, and requests, as well as any
3 summaries or compilations of the information contained in these documents, to the
4 extent that such summaries or compilations themselves include Confidential Health
5 Information. Confidential Health Information is intended to encompass all
6 "protected health information" as such term is defined by the Standards for Privacy
7 of Individually Identifiable Health Information, 45 C.F.R. part 160.103,
8 promulgated pursuant to the Health Insurance Portability and Accountability Act
9 ("HIPAA"), as well as any patient health information protected by state law.

10 d. "Covered Entity" shall have the meaning as such term is defined
11 by the Standards for Privacy of Individually Identifiable Health Information, 45
12 C.F.R. part 160.103, promulgated pursuant to HIPAA.

13 e. "Documents" shall mean all originals, copies, and non-identical
14 copies, however produced or reproduced, of any printed, typed, handwritten,
15 graphic, electronic or otherwise recorded matter of whatever character, including,
16 but not limited to, files, correspondence, contracts, agreements, memoranda, notes,
17 forms, diaries, reports, interoffice communications, statements, transcripts,
18 affidavits, photographs, audiotape or videotape recordings, motion pictures, e-mail,
19 computer files, and any other documents and electronically stored information
20 contemplated by Fed. R. Civ. P. 34(a)(1)(A).

21 f. "February 5, 2010 Stipulated Protective Order" shall refer to the
22 Stipulated Protective Order so-ordered by this Court on February 5, 2010. The
23 February 5, 2010 Stipulated Protective Order shall apply to all Documents produced
24 in this Litigation prior to the entry of this Order.

25 g. "Legend" as used herein shall mean a stamp or similar insignia
26 stating "CONFIDENTIAL," "CONFIDENTIAL-Attorney Eyes Only," or other
27 appropriate term or terms connoting the confidentiality of the document. When any
28 document is designated "CONFIDENTIAL" or "CONFIDENTIAL-Attorney Eyes

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 7 of 27 Page ID #:2436

1 Only” pursuant to this Order, the Legend shall be affixed to the cover of such
2 document and to any page therein containing Confidential Information.

3 h. “Litigation” shall refer to the above-captioned case, including
4 any appeals through final judgment.

5 i. “Producing Party” shall mean any Party to the Litigation, or any
6 other person or entity producing documents, information, or other materials in the
7 Litigation, including any Covered Entity.

8 j. “Parties” collectively shall mean and include Plaintiffs and
9 Defendants. As used in this Order, the term “Parties” shall not include putative
10 class members or class members.

11 k. “Party” shall mean any one of the Parties.

12 2. Scope Of Application Of Order:

13 This Order shall govern all documents, testimony and other information and
14 materials generated or produced in response to any discovery conducted by any
15 Party to the Litigation pursuant to the Federal Rules of Civil Procedure and the local
16 rules of the United State District Court for the Central District of California that are
17 generated or produced after this Order is so-ordered by the Court. Further, this
18 Order shall govern all documents and materials containing Confidential Information
19 that are submitted in connection with a pleading, brief or other document filed with
20 this Court after this Order is so-ordered by the Court. This Order shall not govern
21 documents produced prior to the date this Order is so-ordered by the Court. Nor
22 does this Order govern the use or admissibility of any evidence at trial or the
23 procedures for using such documents or information at trial. The Parties shall
24 confer and attempt to agree before any hearing, trial, or other proceeding on the
25 procedures to be included in a confidentiality order pursuant to which Confidential
26 Information may be introduced into evidence or otherwise used at such hearing,
27 trial, mediation, or other proceeding. Absent agreement, the parties shall request the
28 Court to issue an order governing the use of information in the context of such

1 proceedings. In addition, this Order shall govern all Confidential Information
2 produced by any Producing Party that is produced after this Order is so-ordered by
3 the Court, including without limitation a Covered Entity, in response to any
4 discovery conducted by any Party pursuant to the Federal Rules of Civil Procedure,
5 the rules of the Central District of California, and 45 C.F.R. part 164.512.

6 3. Designation As "Confidential Information":

7 A Producing Party may designate any document or portion thereof that
8 contains Confidential Information as "Confidential" pursuant to this Order by
9 affixing the Legend as provided under subparagraph 1(f) to any document
10 containing, or that the Producing Party believes contains, Confidential Information.
11 If, through inadvertence, a Producing Party produces any document or portion
12 thereof that contains Confidential Information but fails to designate the document as
13 either "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" pursuant
14 to this Order by affixing the appropriate Legend as provided under subparagraph
15 1(f), the Producing Party subsequently may designate the document as
16 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only." But in the
17 event a Producing Party produces voluminous documents for inspection only, the
18 Producing Party shall not need to stamp the documents in advance of the initial
19 inspection and instead the following procedures shall apply:

20 a. The Producing Party shall not be considered to have waived the
21 confidential status of documents made available during such an initial inspection,
22 but not chosen by the inspecting Party for copying.

23 b. Thereafter, upon selection of specified documents for copying by
24 the inspecting Party, the Producing Party shall, within 30 calendar days and prior to
25 providing copies of the selected documents to the requesting Party, stamp each page
26 of such documents as may contain Confidential Information with either of the
27 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" designations.
28

1 c. A Producing Party also may designate documents as
2 "CONFIDENTIAL" or "CONFIDENTIAL — Attorney Eyes Only" by advising
3 counsel of record to whom the documents are to be produced, in writing, of the
4 Bates numbers of the documents that are designated Confidential pursuant to this
5 Order.

6 4. Disclosure Of Confidential Information:

7 Except as otherwise provided in this Order, Confidential Information may
8 only be disclosed to or examined by the following persons:

9 a. the Parties, including their current employees who are necessary
10 to assist counsel in this Litigation, the Parties' inside counsel, if any, and employees
11 of the Parties' inside counsel who are acting under the direction and control of such
12 counsel and who are necessary to assist such counsel in this Litigation;

13 b. the Parties' respective outside counsel and employees of the
14 Parties' outside counsel who are acting under the direction and control of such
15 counsel and who are necessary to assist such counsel in this Litigation;

16 c. vendors who are acting under the direction of the Parties'
17 counsel and who are necessary to assist such counsel in this Litigation;

18 d. independent consultants or experts retained in connection with
19 this Litigation by the Parties' counsel, but only to the extent necessary for the
20 prosecution or defense of the instant matter;

21 e. experts and/or other deponents or witnesses, but only to the
22 extent necessary for the preparation of testimony or during testimony at a
23 proceeding in this Litigation;

24 f. stenographers or court reporters, but only to the extent necessary
25 to prepare records of sworn testimony in this Litigation; and

26 g. magistrate judges, judges, clerks, or other members or employees
27 of any court of competent jurisdiction over proceedings in or related to this
28 Litigation.

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 10 of 27 Page ID #:2439

1 If a non-Producing Party concludes for the purpose of this Litigation that it
2 needs to disclose any of the Confidential Information to any person not specified in
3 this Paragraph 4, such party shall notify all other Parties, including the Producing
4 Party, and such notice shall state the identity of the person(s) that the non-Producing
5 Party needs to disclose to, and the reasons for such disclosure. The parties shall
6 confer in an effort to resolve the status of the subject information. If the Parties,
7 including any Producing Party, cannot agree to such release, counsel for the non-
8 Producing Party shall have the right to move for an order allowing disclosure to the
9 person(s) not specified in Paragraph 4 for good cause shown.

10 5. Disclosure of Confidential — Attorney Eyes Only Information:

11 Except as otherwise provided in this Order, Confidential Information
12 designated as “CONFIDENTIAL — Attorney Eyes Only” shall be subject to the
13 restrictions set forth in Paragraph 4 and further shall not be shown to the Parties or
14 to their inside counsel.

15 6. Disclosure of Confidential Health Information:

16 “Confidential Health Information” shall constitute a subset of Confidential
17 Information and shall be designated as “CONFIDENTIAL” and subject to all other
18 terms and conditions governing the treatment of Confidential Information, as set
19 forth in Paragraph 4. “Confidential Health Information” shall include, but is not
20 limited to, claims data, claim forms, grievances, appeals, or other documents or
21 records that contain any patient health information required to be kept confidential
22 under any state or federal law, including 45 C.F.R. parts 160.103, promulgated
23 pursuant to HIPAA, and the following subscriber, patient, or member identifiers:

- 24 a. names;
25 b. all geographic subdivisions smaller than a State, including street
26 address, city, county, precinct, and zip code;

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Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 11 of 27 Page ID #:2440

1 c. all elements of dates (except year) for dates directly related to an
2 individual, including birth date, admission date, discharge date, dates upon which
3 medical services were provided, age, and date of death;

4 d. telephone numbers;

5 e. fax numbers;

6 f. electronic mail addresses;

7 g. social security numbers;

8 h. medical record numbers;

9 i. health plan beneficiary numbers;

10 j. account numbers;

11 k. certificate/license numbers;

12 l. vehicle identifiers and serial numbers, including license plate
13 numbers;

14 m. device identifiers and serial numbers;

15 n. web universal resource locators ("URLs");

16 o. internet protocol ("IP") address numbers;

17 p. biometric identifiers, including finger and voice prints;

18 q. full face photographic images and any comparable images; and

19 r. any other unique identifying number, characteristic, or code; and

20 any other information the Producing Party knows could be used alone or in
21 combination with other information to identify an individual who is the subject of
22 information.

23 In addition to the other limitations on the use of Confidential Information as
24 set forth above, the Producing Party may, but is not required to, redact the above
25 identifiers or take other suitable precautions in order to protect the privacy of its
26 members, subscribers, or patients, but only to the extent such redaction or other
27 precaution does not result in prejudice to another Party in the Litigation. All
28 documents produced by a Producing Party that contain Confidential Health

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 12 of 27 Page ID #:2441

1 Information shall not be used by any Party to the Litigation for any purpose other
2 than in connection with this Litigation. This paragraph shall not prevent a
3 Producing Party from disclosing its own Confidential Health Information to any
4 person, including its counsel and their partners, associates, paralegals, and clerical
5 and litigation support personnel.

6 7. Copies:

7 All copies of any documents containing Confidential Information shall
8 constitute and be treated as Confidential as provided in this Order. Any person
9 making, or causing to be made, copies of any documents containing Confidential
10 information shall make certain that each such copy bears the appropriate Legend
11 pursuant to the requirements of this Order. Nothing herein shall preclude any
12 arrangement among the Parties by which documents or other materials may be
13 copied by the Producing Party.

14 8. Acknowledgement And Written Assurance:

15 Except as otherwise provided below, each person who is permitted to see
16 stamped Confidential Documents first shall be shown a copy of this Order and shall
17 sign an acknowledgment form that states:

- 18 a. the signatory has read and understands this Order;
19 b. the signatory understands the information contained in the
20 Documents has been designated as "CONFIDENTIAL;"
21 c. the signatory understands that the unauthorized disclosure of
22 information contained in any stamped Confidential Document may constitute
23 contempt of Court; and
24 d. the signatory consents to the exercise of personal jurisdiction by
25 this Court for purposes of enforcement of this Order.

26 Persons permitted to see Confidential Information shall sign the
27 Acknowledgement and Written Assurance form annexed hereto as Exhibit 1. These
28 signed forms shall be maintained by the Party acquiring the signatures and shall be

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 13 of 27 Page ID #:2442

1 produced to the Court for in camera inspection if any Party requests any such
2 inspection. As to any third-party contractors or vendors included in the list of
3 persons who must sign an Acknowledgement and Written Assurance form described
4 in Paragraph 4(c) above, an owner or manager of such contractor may sign on behalf
5 of his or her employees. No such signed Acknowledgment and Written Assurance
6 shall be required of the following persons: (i) Court personnel; (ii) any person or the
7 employee of any person or entity who produces the Confidential Information or who
8 is identified as a recipient on a document containing Confidential Information; or
9 (iii) outside counsel for the Parties and employees of the Parties' outside counsel
10 who are acting under the direction and control of such counsel and who are
11 necessary to assist such counsel in this Litigation.

12 A copy of each executed Acknowledgment and Written Assurance shall be
13 retained by counsel of record for the Party obtaining the Acknowledgement and
14 Written Assurance. A Producing Party may make such application to the Court for
15 disclosure of a copy of the executed Acknowledgement(s) and Written
16 Assurance(s), and the Court will grant such an application upon good cause shown,
17 except that a Party need not disclose a copy of an executed Acknowledgement and
18 Written Assurance if doing so would tend to reveal the identities of experts retained
19 by a Party, the disclosure of whom is not required by the Federal Rules of Civil
20 Procedure, unless ordered by the Court. This paragraph shall not prevent a
21 Producing Party from disclosing its own Confidential Information to any person,
22 including its counsel and their partners, associates, paralegals, and clerical and
23 litigation support personnel.

24 9. Prohibition on Use Of Confidential Information Produced In This
25 Litigation In Other Actions:

26 Any documents or other information produced by any Producing Party in this
27 Litigation that has been designated as "CONFIDENTIAL" or "CONFIDENTIAL-
28 Attorney Eyes Only" shall be used solely for the purpose of this Litigation, which

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 14 of 27 Page ID #:2443

1 includes discovery, motions, briefs, preparation for trial, trial, enforcements of court
2 orders or judgments, and on appeal, if any, and for no other purpose.

3 10. Subpoena Or Other Third-Party Request For Confidential Information
4 Produced In This Litigation:

5 In the event any person having possession, custody, or control of any
6 Confidential Information receives a subpoena or other compulsory process by any
7 court, administrative agency, legislative body commanding production of such
8 information, such person shall, unless otherwise precluded by law: (i) notify counsel
9 of record for the Producing Party within 48 hours by hand, e-mail or facsimile of the
10 request for Confidential Information; (ii) provide a copy of the subpoena or other
11 process or order requesting the production of Confidential Information to counsel of
12 record for the Producing Party; and (iii) cooperate with the Producing Party. The
13 Producing Party shall have the burden of defending against or objecting to such
14 request to the extent it seeks Confidential Information. The person receiving such
15 request shall be entitled to comply with it only if: (i) the Producing Party does not
16 seek an order modifying or quashing the request for Confidential Information; (ii)
17 the Producing Party is unsuccessful in seeking an order modifying or quashing the
18 request for Confidential Information; or (iii) the person is otherwise ordered by a
19 court or required by a government subpoena to produce the Confidential
20 Information.

21 11. Redacted Disclosures:

22 To the extent that any Producing Party discloses documents containing
23 Confidential Information that is not relevant to the Parties' claims or defenses, a
24 Producing Party may redact such Confidential Information and so indicate on the
25 document being produced. If redactions are made pursuant to this Section 11, the
26 Producing Party shall also disclose in writing information concerning the nature of
27 the redacted material without disclosing its contents. Information that may be
28 redacted includes, but is not limited to, highly sensitive pricing or other information,

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 15 of 27 Page ID #:2444

1 fee schedules, medical information, and private or personal information regarding
2 persons or entities other than the named Plaintiffs. If any of the Parties believes that
3 any information has been redacted improperly, the Parties first shall seek to resolve
4 any dispute over such redaction and, if the dispute is not resolved, the objecting
5 Party may submit a letter to the Court seeking access to an un-redacted version of
6 such information within 14 days of the Producing Party's production of the redacted
7 material.

8 12. Designation Of Documents Produced By Third Parties:

9 Any Party may designate as "CONFIDENTIAL" any document that is
10 produced or disclosed without such designation by any third party within 30
11 calendar days of the production of such document, or such other time as may be
12 agreed, provided that such document contains Confidential Information of a
13 designating Party, in the following manner:

14 a. Parties to the Litigation may designate such document by
15 sending written notice of such designation, accompanied by copies of the designated
16 document bearing the Legend, to all other Parties in possession or custody of such
17 previously undesignated document or by reference to a Bates number of the
18 document. Within 30 calendar days of receipt of such notice, or such other time as
19 may be agreed, any Party receiving such notice and copy of the designated
20 document pursuant to this subparagraph shall return to the designating Party all
21 undesignated copies of such document in their custody or possession, or alternately
22 shall affix the Legend to all copies of such designated document in their custody or
23 possession.

24 b. Upon notice of designation pursuant to this Paragraph, the
25 Parties also shall: (i) make no further disclosure of such designated document or
26 information contained therein, except as allowed under this Order; (ii) take
27 reasonable steps to notify any persons who were provided copies of such designated
28 document of the terms of this Order; and (iii) take reasonable steps to reclaim any

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 16 of 27 Page ID #:2445

1 such designated document in the possession of any person not permitted access to
2 such information under the terms of this Order.

3 c. The Parties shall serve a copy of this Order simultaneously with
4 any discovery request made to a non-Party. For any discovery that was served on a
5 non-Party prior to the date of this Order, the Party who served the discovery shall
6 provide the non-Party with a copy of this Order within five days of the date this
7 Order is entered by the Court.

8 13. Designation Of Deposition Transcripts And Exhibits As Confidential:

9 a. At any depositions conducted in this Litigation of any person
10 within the categories set forth in paragraph 4 above and otherwise in accordance
11 with the provisions of this Order, the Parties may use, refer to, or mark as deposition
12 exhibits any documents designated as "CONFIDENTIAL" and all Confidential
13 Information contained therein or derived therefrom. Any documents designated as
14 "or "CONFIDENTIAL — Attorney Eyes Only" information that are marked as
15 deposition exhibits shall be sealed separately from the remainder of the deposition
16 transcript and exhibits. When a Party or Producing Party uses or refers to
17 Confidential —Attorney Eyes Only information at a deposition, the portion of the
18 deposition transcript that relates to such Confidential documents or information shall
19 be stamped as "CONFIDENTIAL — Attorney Eyes Only" and sealed separately
20 from the remainder of the transcript and shall be treated as Confidential — Attorney
21 Eyes Only under the provisions of this Order. No Party shall disclose or give
22 possession of documents designated as "CONFIDENTIAL — Attorney Eyes Only"
23 to any deponent other than as provided in paragraph 5 above.

24 b. Counsel will make a good faith effort to designate documents or
25 testimony as Confidential Information at the time of the deposition. Within 30
26 calendar days after receiving a deposition transcript, any Party, or any deposed
27 Producing Party may designate portions of the transcript, or exhibits thereto, as
28 being as "CONFIDENTIAL." At any deposition conducted in this Litigation, the

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 17 of 27 Page ID #:2446

1 Parties shall attempt in good faith preliminarily to identify and designate
2 Confidential testimony and exhibits without prejudice to their right to designate
3 other testimony or exhibits or to withdraw such designations after receipt of the
4 deposition transcript. Except as provided in subparagraph 12(a) above, Confidential
5 deposition testimony may be so designated by underlining the portions of the pages
6 that are confidential and stamping such pages as "CONFIDENTIAL." Until
7 expiration of the thirty day calendar day period, the entire deposition transcript, and
8 all exhibits thereto, shall be treated as "CONFIDENTIAL — Attorney Eyes Only"
9 under the provisions of this Order. If a timely Confidential designation is made, the
10 Confidential portions of the deposition transcript, together with any deposition
11 exhibits designated as "CONFIDENTIAL," shall be sealed separately from the
12 portions of the deposition transcript and exhibits not so marked, and shall be treated
13 as Confidential under the provisions of this Order.

14 14. Receipt Of Confidential Information From Independent Sources:

15 With respect to any document that has been produced in this Litigation and
16 designated as "CONFIDENTIAL" by a Producing Party, should any Party claim to
17 have received the document from another source without any restriction of
18 confidentiality and should that Party seek to be relieved of the confidentiality
19 restrictions of this Order with respect to that document, the Party first shall seek the
20 consent of the Producing Party, and if applicable, other Parties. If the Parties cannot
21 agree as to whether the document(s) should be excluded from this Order, the Parties
22 shall submit the matter to the Court for resolution.

23 15. Inadvertent Failure To Designate Information As Confidential:

24 Inadvertent failure to designate information as "CONFIDENTIAL" or
25 "CONFIDENTIAL — Attorney Eyes Only," or to do so within 30 calendar days,
26 may be remedied at any time by supplemental written notice given by the Producing
27 Party. Upon receipt of such notification, all information so designated shall be
28 subject to this Order as if it had been initially so designated, and the Parties shall (a)

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 18 of 27 Page ID #:2447

1 not make any further disclosure or communication of all information so designated
2 (the "Redesignated Information") except as provided for in this Order, (b) take
3 reasonable steps to notify any persons known to have possession of any
4 Redesignated Information of the effect of the new designation under this Order, and
5 (c) promptly endeavor to procure all copies of the Redesignated Information from
6 any persons known to have possession of Redesignated Information who are not
7 entitled to receipt under Paragraphs 4 and 5 above. The Parties further shall make a
8 reasonable good-faith effort to insure that any analyses, memoranda, or notes that
9 were generated based upon such Redesignated Information are immediately treated
10 in accordance with the new designation.

11 16. Inadvertent Production:

12 If information subject to a claim of attorney-client privilege, attorney work
13 product, or any other ground on which the production of such information should
14 not be made to any Party nevertheless is inadvertently produced in this Litigation by
15 any Producing Party, such production shall not prejudice, or otherwise constitute a
16 waiver of, or estoppel as to, any claim of privilege, attorney work product, or other
17 ground for withholding production to which the Producing Party would be entitled.
18 If a claim of inadvertent production is made with respect to information then in the
19 custody of another Party, such Party promptly shall return such information to the
20 Producing Party. Where the information produced is electronically stored, such
21 Party shall sequester the information and not use it for any purpose in litigation until
22 the claim of inadvertent production is resolved. The Party returning and/or
23 sequestering such material may submit a letter to the Court for an order compelling
24 the production of the material, but any such letter shall not assert as a ground for
25 entering such an order the fact or circumstance of the inadvertent production.

26 17. Filing Of Confidential Information Under Seal:

27 Any Party wishing to file a document or paper containing Confidential
28 Information shall endeavor to redact or otherwise exclude from the filing any

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 19 of 27 Page ID
#:2448

1 Confidential Information not directly pertinent to that Party's filing. Any request to
2 seal "CONFIDENTIAL" and "CONFIDENTIAL — Attorney Eyes Only"
3 information that is directly pertinent to that Party's filing shall be made in
4 accordance with Local Rule 79-5 of the United States District Court for the Central
5 District of California, and shall seek to file under seal only those portions of filings
6 containing documents stamped "CONFIDENTIAL" or "CONFIDENTIAL —
7 Attorney Eyes Only" material. Where reasonably possible, the Parties shall agree to
8 redact documents or stipulate to facts in order to avoid the disclosure of Confidential
9 Information and the need to file documents under seal. A designation as
10 "CONFIDENTIAL" by a Party or Producing Party under this Order alone is not a
11 sufficient basis to seal the information submitted in connection with a request for
12 relief from the Court.

13 18. Use Of Confidential Information By A Party In These Proceedings:

14 Notwithstanding any other provision of this Order, the Parties shall confer
15 and attempt to agree before any Court trial or hearing on the procedures to be
16 included in a protective order pursuant to which "CONFIDENTIAL" or
17 "CONFIDENTIAL — Attorney Eyes Only" material may be used or introduced into
18 evidence at such trial or hearing. Upon reaching agreement, the Parties shall give
19 notice of the terms of such agreement to each third party producing Confidential
20 Information which may be used or introduced at such trial or hearing. Because it
21 would affect the public availability of material used at a trial or hearing, any such
22 agreement will be effective only upon Court approval. Absent agreement among the
23 Parties, any Party upon reasonable notice to all third parties producing Confidential
24 Information which may be used or introduced at such trial or hearing may move the
25 Court to issue an order governing the use of Confidential Information at a trial or
26 hearing.

27

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Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 20 of 27 Page ID
#:2449

1 19. Objections To Confidentiality Designations:

2 If any Party in this Litigation desires to have a Confidentiality designation
3 removed, counsel for such Party shall first request in writing, or pursuant to the
4 terms of any stipulation for electronic service that is in place at the time, that the
5 Producing Party remove the Confidentiality designation, and shall state the reasons
6 for its request. If the Producing Party withdraws its designation of such
7 information, the Producing Party shall express that withdrawal by written notice
8 submitted to the Parties. If the Producing Party refuses to withdraw the designation,
9 it must state its reasons in a writing served by hand, by facsimile, or by electronic
10 means, within five business days of receiving the request. Thereafter, the Parties
11 shall meet and confer to attempt to resolve the dispute. If an agreement cannot be
12 reached, the requesting Party may petition the court to re-designate the Confidential
13 Information. If a designation is challenged, the Parties agree that the mere
14 designation of a document as "CONFIDENTIAL" or "CONFIDENTIAL —
15 Attorney Eyes Only" cannot be used to support or detract from the position that a
16 document should be so designated. The Parties shall continue to treat the
17 information as Confidential Information unless and until the application to re-
18 designate is granted and the time for any interlocutory appeal or emergency review
19 has expired. Nothing in this paragraph shall be construed to change the applicable
20 burden of establishing whether or not any particular document is entitled to
21 confidential treatment. Nothing in this Order shall abridge the right of any
22 Producing Party to seek appropriate judicial review or relief in respect to any ruling
23 that the Court may make.

24 20. No Oral Waivers:

25 The Parties may waive the confidentiality provisions of this Order as to any
26 Confidential Information only by explicit written waiver. Such waiver shall not
27 result in a waiver of the confidential status of any other information deemed
28 Confidential pursuant to this Order.

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 21 of 27 Page ID
#:2450

1 21. Effect Of Order:

2 This Order shall remain in full force and effect indefinitely until modified,
3 superseded, or terminated by executed written agreement of the Parties or by order
4 of the Court. This Court shall retain continuing jurisdiction beyond the conclusion
5 of this Litigation, including, without limitation, during any appeal, to enforce the
6 provisions of this Order pursuant to its contempt powers and with all other powers
7 provided for in this Order.

8 22. Amendments:

9 This Order may be amended by the agreement of counsel for the Parties in the
10 form of a written amendment to the Order. Such proposed modifications shall be
11 submitted to the Court for approval.

12 23. Return Or Destruction Of Confidential Information Following
13 Conclusion Of Litigation:

14 Within 30 days after the conclusion of this Litigation by final judgment not
15 subject to appeal or by settlement, all documents or other items constituting or
16 containing Confidential Information that are in the possession, custody, or control of
17 any person other than the Producing Party shall either be returned to the Producing
18 Party or destroyed at the election of the Producing Party. Provided, however, that
19 Plaintiffs' counsel, specifically Hooper, Lundy & Bookman, P.C. ("HLB"), in
20 accordance with its standard policies and practices to retain its case file and the
21 documents contained therein in the unlikely event a malpractice lawsuit is filed
22 against it, may retain a single copy of each document or item of Confidential
23 Information for at least two years as a necessary precaution.

24 All documents or other items constituting or containing Confidential
25 Information retained by HLB for this limited time period will remain subject to this
26 Order. HLB will be obligated to notify the Producing Party within 14 days of being
27 served as a defendant in a lawsuit in which the Confidential Information appears
28 reasonably likely to be relevant, and will not disclose or produce the Confidential

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 22 of 27 Page ID
#:2451

1 Information, or allow it to be disclosed or produced, in the lawsuit unless and until a
2 court denies the Producing Party's application, if any, to have the Confidential
3 Information protected from disclosure, or unless and until the Producing Party
4 notifies HLB that it has no objection to the Confidential Information being disclosed
5 or produced in the lawsuit. Subject to HLB's ability to retain a single copy of
6 documents and items containing Confidential Information in accordance with its
7 standard policies and practices, within 30 days after the conclusion of this
8 Litigation, each Party shall provide an affidavit to each Producing Party attesting
9 that all documents or other items constituting or containing Confidential Information
10 produced in this Litigation were returned or destroyed *in toto*. Counsel for all
11 Parties may retain copies of all documents that that have been filed with the Court,
12 depositions, and all exhibits thereto. In addition, counsel for any Party may retain
13 information that they determine in good faith to constitute work product, including
14 but not limited to, documents relied upon in preparing motions, briefs, trial
15 notebooks, and preparing for depositions.

16 24. Notices:

17 All notices that this Order requires to be sent to a particular Party shall be sent
18 via e-mail and mailed via overnight mail or regular mail to counsel for that Party at
19 the address listed in the signature block below.

20 25. No Admission:

21 Nothing in this Order constitutes an admission or agreement that any
22 document or information, or any testimony relating to such document or
23 information, is or would be subject to discovery or is admissible as evidence in this
24 case or any other proceeding.

25 26. Continued Use of Confidential Information:

26 The restrictions set forth in this Order shall not be construed as preventing a
27 non-producing party from continuing to use any Confidential Information known to
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Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 23 of 27 Page ID
#:2452

1 or used by it prior to the filing of this Litigation and that subsequently became part
2 of the public domain through no act or omission of the non-producing party.
3

4 **IT IS SO STIPULATED.**
5

6 DATED: August 1, 2014 By: /s/ Peter J. Brachman
7 Peter S. Brachman
8 HOOPER, LUNDY & BOOKMAN, P.C.
9 1875 Century Park East, Suite 1600
10 Los Angeles, CA 90067-2517
11 Telephone: (310) 551-8111
12 pbrachman@health-law.com

13 By: /s/ Nicholas J. Pappas
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15 WEIL, GOTSHAL & MANGES LLP
16 767 Fifth Avenue
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18 Telephone: (212) 310-8000
19 nicholas.pappas@weil.com
20 *Attorneys for Certain Defendants**

21 By: /s/ Bryan S. Westerfeld
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26 Telephone: (949) 215-1990
27 bwesterfeld@walravenlaw.com
28 *Attorneys for Certain Defendants**

29 *= See Attachment A hereto.

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 24 of 27 Page ID
#:2453

ATTACHMENT A

Companies and Group Health Plans Represented by Walraven & Westerfeld

LLP:

Ingenix, Inc.

UnitedHealth Group, Inc.

United Healthcare Services, Inc.

United Healthcare Insurance Company

Best Buy Flexible Benefits Plan

Best Buy Co., Inc.

Cingular Wireless Medical Plan

AT&T Mobility LLC

Pacific Telesis Group Health Care Network Plan

AT&T Medical Expense Plan

AT&T Corp.

Parker Hannifin Corporation Group Insurance Plan

Parker Hannifin Corporation

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 25 of 27 Page ID
#:2454

- 1 **Companies and Group Health Plans Represented by Weil, Gotshal & Manges**
- 2 **LLP:**
- 3 Ingenix, Inc.
- 4 UnitedHealth Group, Inc.
- 5 United Healthcare Services, Inc.
- 6 United Healthcare Insurance Company
- 7 Cintas Corporation Employee Health Benefit Plan (incorrectly identified in the
- 8 First Amended Complaint)
- 9 Cintas Corporation Group Insurance Plan
- 10 Cintas Corporation
- 11 GE Life Disability and Medical Plan
- 12 General Electric Company
- 13 J.C. Penney Corporation, Inc. Health & Welfare Benefits Plan
- 14 J.C. Penney Corporation, Inc. Benefits Administration Committee
- 15 Zale Corporation Benefits Plan
- 16 Zale Corporation
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Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 26 of 27 Page ID
#:2455

EXHIBIT 1

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DOWNEY SURGICAL CLINIC, INC.,
TARZANA SURGERY CENTER,
INC. for Themselves and on Behalf of
All Others Similarly Situated,

Plaintiffs,

vs.

OPTUMINSIGHT, INC.,
UNITEDHEALTH GROUP, INC.,
UNITED HEALTHCARE SERVICES,
INC., UNITED HEALTHCARE
INSURANCE COMPANY, for
Themselves, ALLIED HOLDINGS
EMPLOYEE WELFARE BENEFIT
PLAN, ALLIED HOLDINGS, INC.,
BEST BUY FLEXIBLE BENEFITS
PLAN, BEST BUY CO., INC.,
CINGULAR WIRELESS MEDICAL
PLAN, AT&T MOBILITY LLC,
PACIFIC TELESIS GROUP HEALTH
CARE NETWORK PLAN, AT&T
MEDICAL EXPENSE PLAN, AT&T
CORP., CINTAS CORPORATION
EMPLOYEE HEALTH BENEFIT
PLAN, CINTAS CORPORATION
GROUP INSURANCE PLAN,
CINTAS CORPORATION, GE LIFE
DISABILITY AND MEDICAL PLAN,
GENERAL ELECTRIC COMPANY,
J.C. PENNEY CORPORATION, INC.
HEALTH & WELFARE BENEFITS
PLAN, J.C. PENNEY
CORPORATION, INC. BENEFITS
ADMINISTRATION COMMITTEE,
PARKER HANNIFIN
CORPORATION GROUP
INSURANCE PLAN, PARKER
HANNIFIN CORPORATION, ZALE
CORPORATION BENEFITS PLAN,
ZALE CORPORATION; DOES 1-10,

Defendants.

CASE NO. CV09-05457 PSG (CTx)

**ACKNOWLEDGMENT AND
WRITTEN ASSURANCE TO
PROTECT CONFIDENTIAL
INFORMATION**

Ctrm: 880

Judge: Hon. Philip S. Gutierrez

CV09-05457 PSG (CTx)

1

STIPULATION RE PROTECTIVE ORDER

Case 2:09-cv-05457-PSG-FFM Document 186 Filed 08/01/14 Page 27 of 27 Page ID
#:2456

1 I hereby acknowledge that I, _____
2 have been provided with a copy of the Stipulated Protective Order entered in the
3 above-captioned litigation, a copy of which is annexed hereto and incorporated
4 herein by reference.

5 I further acknowledge that I have read the Stipulated Protective Order and
6 agree to be bound by its terms and conditions and limitations regarding the review
7 and disclosure of Confidential Information in this Litigation. I understand that all
8 documents, material, or information that is subject to the Stipulated Protective Order
9 may be used only for purposes of the conduct of this Litigation and for no other
10 purpose. I understand that the information contained in Documents marked as
11 "CONFIDENTIAL" has been designated as confidential and that the unauthorized
12 disclosure of Documents marked "CONFIDENTIAL" or of information contained
13 therein, may constitute contempt of Court.

14 I also submit to the jurisdiction of the United States District Court for the
15 Central District of California for the limited purpose of any action to enforce the
16 Stipulated Protective Order and acknowledge that any violation may be punishable
17 by contempt of Court.

18
19 DATED: _____, 20____

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Name: _____

EXHIBIT H

Case 1:13-cv-01477-BNB-MEH Document 45 Filed 10/16/13 USDC Colorado Page 1 of 3

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-CV-01477-CMA-BNB

DHR INTERNATIONAL, INC.

Plaintiff.

DEBRA POLLICK and
BATTALIA WINSTON INTERNATIONAL, INC.,

Defendants.

JOINT MOTION FOR A PROTECTIVE ORDER

Plaintiff DHR International, Inc. ("DHR"), Defendant Debra Pollick, and Defendant Battalia Winston International, Inc. ("BW") respectfully request the Court to grant a Protective Order in the above-captioned case to protect any confidential and proprietary business information or property that may be disclosed in this litigation.

The parties have conferred, determined that a Protective Order is necessary, and drafted the attached Protective Order.

The parties jointly request the Court to grant the proposed Protective Order.

Case 1:13-cv-01477-BNB-MEH Document 45 Filed 10/16/13 USDC Colorado Page 2 of 3

s/Brian G. Dershaw

Brian G. Dershaw
Taft Stettinius & Hollister LLP
425 Walnut Street, Suite 1800
Cincinnati, OH 45202-3957

Richard A. Westfall
Aaron Solomon
Hale Westfall, LLP
1445 Market Street, Suite 300
Denver, CO 80202
Attorneys for Plaintiff DHR International, Inc.

s/David J. Schaller

David J. Schaller
Stephanie A. Reedy
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, Colorado 80202
Attorneys for Defendant Debra Pollick

s/William R. Dabney

William R. Dabney
John M. Husband
Holland & Hart, LLP
P.O. Box 8749
555 17th Street #3200
Denver, CO 80201-8749
Attorneys for Defendant
Battalia Winston International, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be electronically filed the foregoing **JOINT MOTION FOR A PROTECTIVE ORDER** with the Clerk of Court on October 16, 2013 using the CM/ECF system which will send notification of such filing to the following via e-mail;

David J. Schaller
Stephanie A. Reedy
Wheeler Trigg O'Donnell LLP
370 Seventeenth Street, Suite 4500
Denver, CO 80202

Attorneys for Defendant Debra Pollick

William R. Dabney
John M. Husband
Holland & Hart, LLP – Denver
P.O. Box 8749
555 17th St. #3200
Denver, CO 80201-8749

Attorneys for Defendant
Battalia Winston International, Inc.

By: s/Bethany S Lillis

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:13-CV-01477-CMA-BNB

DHR INTERNATIONAL, INC.

Plaintiff,

DEBRA POLLICK and
BATTALIA WINSTON INTERNATIONAL, INC.,

Defendants.

PROTECTIVE ORDER

WHEREAS, the parties to the above litigation may produce in discovery confidential information within the meaning of Federal Rule of Civil Procedure 26(c) ("Confidential Material"); and

WHEREAS, it has been agreed by and among the parties, through their respective counsel, that a protective order preserving the confidentiality of documents and information produced in this litigation should be entered by the Court; and

WHEREAS, the Court has reviewed the terms and conditions of the protective order submitted by the parties (the "Protective Order");

IT IS HEREBY ORDERED THAT:

1. Any of the parties to this action or any witness from whom discovery is sought in this action may designate as Confidential Material any documents or information that the producing party believes contains confidential information as defined by Federal Rule of Civil Procedure 26(c). Confidential Material shall remain confidential and shall not be used except in

the prosecution, defense or settlement of this action, including appeals related to this action.

Confidential Material shall not be used or shown, disseminated, copied, or in any way communicated, orally, in writing, or otherwise, to anyone for any other purpose.

2. Confidential status may be claimed for documents and information contained therein either by stamping or writing "confidential" on them prior to their production or by providing counsel for the inspecting party with a written description of the documents for which confidential treatment is desired. The parties may designate documents as confidential prior to the entry of this Protective Order and, upon entry of the order, such documents shall be considered Confidential Material and be governed by the provisions of this Protective Order.

3. Nothing in this Protective Order shall be construed as an agreement, concession or admission by any party that documents designated as Confidential Material pursuant to this Protective Order are otherwise confidential or proprietary. The designation of any documents or information as Confidential Material may be challenged by any party by motion to the Court.

5. Confidential Material may be disclosed to the Court and to other persons whose assistance is required by counsel for the parties in conducting this litigation, but only to the parties, those persons regularly employed by counsel for the inspecting party, persons assisting such counsel in this litigation, or any regular employee of such counsel to whom it is necessary that the documents or information be shown for purposes of this litigation. The parties may designate certain Confidential Material as "Attorney Eyes Only," which status can be challenged as set forth above. Such a designation restricts access to this Confidential Material as set forth above, except that it cannot be shared with the parties without the written consent of the disclosing party's counsel.

6. Counsel for the parties may also disclose or discuss Confidential Material, or any contents thereof, to or with witnesses and prospective witnesses and persons employed by the inspecting party or counsel to assist in the preparation of this case for trial, such as experts, on the condition that (i) all persons to whom the disclosure of confidential information is made under this paragraph are made fully aware of the terms of this Protective Order and understand that use of any information contained in Confidential Material is strictly limited to litigation of this case; and (ii) prior to disclosure by the inspecting party or counsel of the Confidential Material pursuant to this paragraph, a copy of this Protective Order shall be presented to the person to whom such document(s) or information are to be disclosed, who shall sign it or otherwise signify in writing that he or she has been advised that a violation of this Protective Order may subject him or her to sanctions for contempt of Court, and that he or she consents to be bound by the terms of this Protective Order.

7. If the answer to any interrogatory, request for production of documents, or request for admission requires the disclosure of Confidential Material, that answer shall be stamped "confidential." Such answer shall be handled in the same manner as any other Confidential Material of that designation.

8. Portions of any depositions where any confidential information is used or referred to shall be taken only in the presence of those authorized under this Order to have access to such confidential information. The transcript or portions of such depositions containing confidential information shall be stamped confidential and handled in the same manner as other Confidential Material of that designation.

9. At the conclusion of the proceedings of this action, all Confidential Materials produced pursuant to this Protective Order and all copies, excerpts, or extracts (excluding

excerpts or extracts incorporated into any privileged memoranda of the parties), except for such material which has become part of the record in this action, shall be returned or destroyed as agreed at the time by counsel for the parties.

10. In the event that a party intends to use Confidential Material in a brief or document filed with the Court, the party shall notify the other party and identify the Confidential Material at least 5 business days in advance of filing the Confidential Material with the Court, so that the other party has an opportunity to petition the Court to seal the Confidential Material according to the Federal Rules of Civil Procedure. Regardless of whether or not the filing party complies with the notice provisions of this paragraph, the other party shall have the opportunity to request that the Court seal Confidential Material filed with the Court through an appropriate motion.

11. No paper shall be filed under seal without Court Order specifically authorizing the same under D.C. COLO. LCivR 7.2. The Clerk of the Court shall maintain under seal all such sealed documents and make them available only to the Court and to counsel for the parties to this proceeding until further order of this Court.

12. At the trial of this action or at any hearing relating to this action before any judicial officer, a party may, subject to the rules of evidence and the order of the Court, use any Confidential Material for any purpose, provided that counsel for the party producing such material is given an opportunity to be heard prior to the disclosure of the Confidential Material.

13. Nothing contained herein shall be construed to prejudice any party's right to use any document or information for purposes of further discovery. Counsel may make and use a photocopy of a document or information designated as Confidential Material if such copy (a) is retained in counsel's possession and is made for counsel's internal use only; (b) is to be used for

purposes of disclosure pursuant to paragraph 6 hereof; (c) is to be identified in a deposition or used as a deposition exhibit; or (d) is to be used at any hearing or trial in this case. In any such situation, the parties shall take reasonable steps to maintain the confidential nature of the document or information.

13. This Protective Order shall be binding upon the parties to this action and any witness who has access to confidential documents or information. The parties shall request that any witness with access to confidential information or documents evidence his or her agreement to be bound by the terms of this Protective Order by signing a copy of the Protective Order and returning it to counsel of record in this matter. This Protective Order may also be used to protect Confidential Materials asserted as such by any non-party witness who produces such materials pursuant to a subpoena or otherwise in discovery in this matter. In the event that such witness asserts that documents or information sought of him or her in discovery are confidential, the party seeking such discovery shall provide a copy of this Protective Order to the witness. Such witness shall evidence his or her agreement to be bound by the terms of this Protective Order in order to produce documents or information in discovery as Confidential Material, by signing a copy of this Protective Order and returning it to counsel for the party seeking such discovery, who shall file it with the Clerk and serve it upon opposing counsel. The parties may also mark any documents received from any witness as confidential, subject to the terms and procedures outlined in this Agreement.

14. This Protective Order may be construed or modified by the Court, on application of either party or any witness or on the Court's own initiative, to ensure the adjudication of all issues in this action in light of all relevant and material facts without publishing or otherwise destroying the value of Confidential Materials.

15. Any confidential information should be placed, to the extent possible, in exhibits which can be removed from papers being filed and retained by the submitting party.

16. Nothing herein shall prohibit the disclosure of any documents or information to public officials for law enforcement purposes.

17. Inadvertent production of privileged or arguably privileged materials under this order shall not be deemed to be either a general waiver of the attorney-client privilege, the work product doctrine, or any other privileges, or a specific waiver of any such privilege.

SO ORDERED,

Date: _____

Magistrate Judge Boyd N. Boland

SO STIPULATED:

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EXHIBIT I

Case 1:12-cv-00416-BLW Document 28 Filed 12/21/12 Page 1 of 7

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

RUSSELL CASE, an individual, and CASE
CORPORATE COUNSEL, LLC, an Idaho
limited liability company,

Plaintiffs,

vs.

TRIBE MOBILE, INC., a British Virgin Islands
corporation, VIRGIN MOBILE LATIN
AMERICA, INC., a British Virgin Islands
corporation, and DOES 1-15, fictitiously
named,

Defendants.

Case No. 12-CV-00416-BLW

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF ITS VERSION OF A
STIPULATED PROTECTIVE ORDER**

I. Preliminary Statement

Defendant Virgin Mobile Latin America (the "Company" or "Virgin Mobile") would like to have a Stipulated Protective Order entered in this matter. Plaintiffs Russell Case and Case Corporate Counsel, LLC ("Case") are willing to go along with a Stipulated Protective Order in the hope that it will facilitate obtaining discovery from Virgin Mobile. After extended discussions between the parties, there is one provision in the Stipulated Protective Order upon which the parties have not been able to reach agreement.

Case believes that the Stipulated Protective Order should not interfere with his ability to pursue the private right of action under the Dodd Frank Act. (Second Amended Complaint

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS VERSION OF A STIPULATED PROTECTIVE
ORDER - 1**

Case 1:12-cv-00416-BLW Document 28 Filed 12/21/12 Page 2 of 7

("SAC") at ¶¶ 56-59.) As a result, Case has proposed that the Stipulated Protective Order include the following sentence:

Nothing contained herein shall in any way restrict the right or ability of any party to provide or disclose information to any governmental or regulatory authority.

(A copy of the draft Stipulated Protective Order with this sentence is attached as Exhibit A to this Memorandum.)

II. Background

Case was told that his employment as the General Counsel and as an officer of Virgin Mobile was being terminated one day after he circulated a disclosure schedule to the CEO and the three founding Board members. This disclosure schedule had been prepared for the purpose of disclosing material facts about the Company to investors and potential investors in connection with Virgin Mobile's \$25 million equity (or debt) offering. The disclosure schedule included information about a sweetheart deal that the Company's Chairman (who was one of the founding Board members) thought that he was entitled to receive and his dispute with the two other founding Board members over the terms of that deal.

The first claim in Case's Second Amended Complaint is based upon the anti-retaliation provision of the Dodd Frank Act:

Virgin Mobile discharged Case as a result of his advice and actions relating to the Company's disclosure obligations under the federal securities laws. The advice given by Case, and the actions taken by Case, including preparation of the disclosure schedule for investors, were all lawful acts. Virgin Mobile's discharge of Case violated 15 U.S.C. § 78u-6(h)(1)(A).

After Case's discharge, Virgin Mobile refused to honor its contractual and other commitments to Case. Among other things, Virgin Mobile threatened to withhold benefits, delayed fulfilling other commitments, and pressured him to give away his rights with the Company's one-sided Separation Agreement. Like the

Case 1:12-cv-00416-BLW Document 28 Filed 12/21/12 Page 3 of 7

discharge, Virgin Mobile's post-termination actions were the result of Case's advice and actions relating to the Company's disclosure obligations under the federal securities laws. Virgin Mobile's post-termination actions were the type of harassment, threats and discrimination that violated 15 U.S.C. § 78u-6(h)(1)(A).

Virgin Mobile is the type of employer covered by 15 U.S.C. § 78u-6(h). Case is the type of individual or whistleblower covered by 15 U.S.C. § 78u-6(h). The statute not only creates a new cause of action (15 U.S.C. § 78u-6(h)(1)(B)(ii)), but also provides for "the attendance of a witness at a trial or hearing conducted under this section [who] may be served at any place in the United States" (15 U.S.C. § 78u-6(h)(1)(B)(ii)).

Based upon Virgin Mobile's violation of 15 U.S.C. § 78u-6(h)(1), Case is entitled to:

- a. Reinstatement in the same position and with the same seniority status.
- b. Two times the amount of back pay that Case would have earned but for the disclosure (including all Bonus and Equity Consideration parts of the back pay).
- c. Compensation for litigation costs, expert witness fees, and attorneys' fees.

(SAC at ¶¶ 56-59.)

III. Discussion

In enacting Section 21F of the Dodd Frank Act, Congress was not only endorsing but adopting a strong policy in favor of blowing the whistle on potential violations of the federal securities laws. *See* H.R. 4173-466, §§ 922-925. The law includes rewards, protections and an expansive statute of limitations. *Id.* And, of most importance to this matter, there is an express "Prohibition against Retaliation" that provides that:

(A) IN GENERAL.—No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms

and conditions of employment because of any lawful act done by the whistleblower—

(i) in providing information to the Commission in accordance with this section;

(ii) in initiating, testifying in, or assisting in any investigation or judicial or administrative action of the Commission based upon or related to such information; or

(iii) in making disclosures that are required or protected under [other provisions of the federal securities laws].

15 U.S.C. § 78u-6(h)(1)(A).

Any Protective Order entered in this matter should include a provision allowing Case to provide information to the SEC or any other governmental entity. Virgin Mobile should not be allowed to use a Protective Order in this litigation as a means of interfering with Case's anti-retaliation or whistleblower claim.

A recent decision by the Administrative Review Board of the U.S. Department of Labor discussed the importance of the whistleblower protection under the Sarbanes Oxley Act ("SOX") with reasoning that applies equally to the whistleblower protection afforded by the Dodd Frank Act:

SOX Section 806's plain language states that no company 'may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment.' By explicitly proscribing non-tangible activity, this language bespeaks a clear congressional intent to prohibit a very broad spectrum of adverse action against SOX whistleblowers.

Moreover, an expansive interpretation of SOX Section 806 conforms to the remedial purposes of whistleblower provisions generally as well as SOX specifically. Since their inception, whistleblower laws consistently have been recognized as remedial statutes warranting broad interpretation and application. ... Whistleblower laws were broadly construed to encourage employees to aid in the enforcement of the substantive statutes by promoting workplaces relatively free from the threat of intimidation. The purpose of the SOX was to protect investors and

Case 1:12-cv-00416-BLW Document 28 Filed 12/21/12 Page 5 of 7

restore confidence to the markets; the whistleblower protections contained in the statute are central to fulfilling that purpose. As Senator Leahy stated in connection with Section 806: '[t]he law was intentionally written to sweep broadly, protecting any employee of a publicly traded company who took such reasonable action to try to protect investors and the market.' Recent expansion of whistleblower rights contained in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) demonstrate Congress' continuing commitment to encouraging and protecting corporate whistleblowers. (footnotes omitted.)

Menendez v. Halliburton, Inc., U.S. Department of Labor, ARB Case Nos. 09-002 & 09-003, Sept. 13, 2011, pp. 15-16.

Furthermore, SEC investigations are conducted confidentially to protect evidence and reputations. Moreover, the SEC regulations specifically provide for requesting confidential treatment:

Any person who, either voluntarily or pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, which information is entitled to confidential treatment and for which no other specific procedure exists for according confidential treatment, may request that the Commission afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, or for any other reason permitted by Federal law....

17 CFR § 200.83(c)(1).

Another factor to consider is that the Dodd Frank Act contains a confidentiality provision that would also protect confidentiality:

Except as provided in subparagraphs (B) and (C), the Commission and any officer or employee of the Commission shall not disclose any information, including information provided by a whistleblower to the Commission, which could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of section 552a of title 5, United States Code, unless and until required to be disclosed to a defendant or respondent in connection with a public proceeding

PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS VERSION OF A STIPULATED PROTECTIVE ORDER - 5

Case 1:12-cv-00416-BLW Document 28 Filed 12/21/12 Page 6 of 7

instituted by the Commission or any entity described in subparagraph (C). ...

15 U.S.C. § 78u-6(h)(2)(A). Consequently, Virgin Mobile does not have a legitimate reason for objecting to the provision that Case believes should be included in any Protective Order.

Finally, to the extent that Case may be assisting the SEC, he should not be placed in a situation where those efforts could be hamstrung by the Company. Virgin Mobile has already terminated Case's employment because of Case's lawful acts in raising the disclosure issues under the securities laws. The Company then attempted to silence Case with its one-sided Separation Agreement. The Company should not be allowed to interfere with Case's ability to proceed with the private right of action under the Dodd Frank Act.

Dated this 21st day of December, 2012.

Respectfully Submitted,

MAUK & BURGOYNE

By: /s/
Briane Nelson Mitchell, Of the Firm
Attorneys for Plaintiffs

PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS VERSION OF A STIPULATED PROTECTIVE ORDER - 6

Case 1:12-cv-00416-BLW Document 28 Filed 12/21/12 Page 7 of 7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of December, 2012, I electronically filed the foregoing with the U.S. District Court. Notice will automatically be electronically mailed to the following individuals who are registered with the U.S. District Court CM/ECF System:

- **James C Dale**
jcdale@stoel.com,njevans@stoel.com,boisedocket@stoel.com
- **Mark S Geston**
msgeston@stoel.com,kejohnston@stoel.com,docketclerk@stoel.com

_____/s/
Sally Anderson,
Assistant to Briane Nelson Mitchell

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF ITS VERSION OF A STIPULATED PROTECTIVE
ORDER - 7**

Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 1 of 7

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RUSSELL CASE, an individual, and CASE
CORPORATE COUNSEL, LLC, an Idaho
limited liability company,

Plaintiffs,

v.

TRIBE MOBILE, INC., a British Virgin
Islands corporations, VIRGIN MOBILE
LATIN AMERICA, INC., a British Virgin
Islands corporation, and DOES 1-15,
fictitiously named,

Defendants.

Case No. 1:12-cv-00416

**STIPULATED MOTION FOR
PROTECTIVE ORDER**

WHEREAS, to protect information that a party hereto deems to be proprietary,
confidential, constitutes trade secrets, or is subject to some other claim of privilege or protection,
but to still permit discovery and pretrial litigation to move forward in an orderly manner, the
parties hereto stipulate and agree that the Court may enter a Protective Order in the following
particulars:

1. Any party to this litigation may, at its discretion and pursuant to Fed. R. Civ. P.
26(c), file privileged, protected, or confidential information with the Court under seal without

STIPULATED MOTION FOR PROTECTIVE ORDER - 1



Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 2 of 7

individual compliance with Dist. Idaho Loc. Civ. R. 5.3, and may similarly file pleadings, motions, briefs, and affidavits specifically dealing with such privileged, protected, and confidential information with the Court under seal. Each such matter shall be filed in a sealed envelope marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," and the Clerk of the Court shall segregate such filings and not permit public access to them.

2. Privileged, protected, or confidential information produced in the course of discovery may be labeled "CONFIDENTIAL" by the producing party and the recipient party shall maintain all information so produced in confidence as set forth herein.

3. Information subject to claims of privilege, confidentiality, or other protection which are discussed or made an exhibit to the record at depositions shall, at the request of any party, accompany the transcripts thereof in sealed envelopes marked "CONFIDENTIAL." Additionally, any party to such a deposition may designate testimony concerning such information as confidential, and such testimony and the reporter shall be instructed to segregate the designated testimony in a separate transcript to be kept in a sealed envelope that identifies the contents thereof as "CONFIDENTIAL." Furthermore, any party to a deposition may demand that no information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, shall be shown to or discussed with a non-party deponent unless the deponent first agrees on the record of the deposition to keep such information first learned at the deposition in confidence subject to the terms of this Stipulation and the Protective Order entered pursuant thereto.

4. Information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, and any memoranda, analyses or reports discussing, summarizing, or otherwise concerning such

STIPULATED MOTION FOR PROTECTIVE ORDER - 2

Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 3 of 7

information may be made available to the Court, court reporters, the parties, counsel for the parties (and such counsel's paralegals, legal assistants, and clerical personnel), and expert witnesses. Said expert witnesses shall be those individuals or parties who have been retained by a party to this litigation for the purposes of this litigation.

5. Expert witnesses, as identified in the preceding paragraph, shall be entitled to review information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, only after agreeing to be bound by the terms of this Stipulation and the protective order entered in connection herewith, by executing a Confidentiality Agreement in the form attached hereto as Exhibit A.

6. Information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court, or "CONFIDENTIAL" if produced in response to discovery, shall not be used at trial or any other public hearing unless and to the extent that the parties previously agree to such use or the Court previously determines that information so designated is not, either in whole or in part, entitled to continuing protection from public disclosure.

7. Anything to the contrary herein notwithstanding, any party may ask the Court for relief from any of the restrictions and limitations herein or in the resultant protective order, or to impose other and additional restrictions on the production, use, and/or dissemination of privileged, confidential or otherwise protected information. In the event of such request to the Court, the burden of justifying the subject evidence's entitlement to protection hereunder shall be upon the party seeking to maintain the confidentiality of such evidence.

8. Unless otherwise ordered by the Court, within thirty (30) days after the conclusion of this litigation, information designated as "CONFIDENTIAL – SUBJECT TO

STIPULATED MOTION FOR PROTECTIVE ORDER - 3

Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 4 of 7

PROTECTIVE ORDER” or “CONFIDENTIAL,” and all copies and reproductions thereof, except those filed with the Court, shall be returned to the producing party —or in the case of copies bearing any attorney’s notes or the like, shall be destroyed. All memoranda, analyses, or reports prepared by any expert witness dealing with any of the specifics of such documents or information shall be similarly destroyed. However, counsel for any party shall be permitted to retain one copy of such information as was filed with the Court for the purpose of their own record keeping only.

9. The parties have agreed to this Stipulation to facilitate discovery. Neither the entry of a protective order pursuant to this Stipulation nor the filing or disclosure of any information designated as “CONFIDENTIAL” or “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” nor the failure to make such designation or filing, shall constitute evidence relevant to any issue in this action and shall not constitute an admission regarding the relevancy or admissibility of information.

10. The provisions of this Stipulation and the resultant protective order shall continue to be binding through and after the conclusion of this litigation in any forum unless the parties agree or the Court orders otherwise.

11. Nothing contained herein shall restrict the use by any party of its own information.

12. Nothing contained herein shall in any way restrict the right or ability of any party to provide or disclose information to any governmental or regulatory authority.

STIPULATED MOTION FOR PROTECTIVE ORDER - 4

Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 5 of 7

DATED: September ____, 2012.

STOEL RIVES LLP

James C. Dale
Mark S. Geston
Attorneys for Defendants

DATED: September ____, 2012.

MAUK & BURGOYNE,

Briane Nelson Mitchell
Attorney for Plaintiffs

STIPULATED MOTION FOR PROTECTIVE ORDER - 5

Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 6 of 7

DECLARATION RE AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

Russell Case, et al. vs. Tribe Mobile, Inc., et al.

U.S.D.C. Case No. 1:12-cv-00416

I, _____, declare as follows:

1. My address is _____
2. I am presently employed as _____ by _____
3. I have received a copy of the Stipulated Protective Order entered in the above action on _____ (the "Order"). I have carefully read and understand the provisions of the Order, and will comply with all of its provisions.
4. I will hold in confidence, will not disclose to anyone not qualified under the Order to receive such document, testimony, information or physical object (or portion thereof), will use only for permitted purposes, and will not use for any business or competitive purpose apart from this litigation, any "CONFIDENTIAL" document, testimony, information or physical object (or portion thereof) that is disclosed to me.
5. I will return all "CONFIDENTIAL" documents, testimony, information or physical objects (or portion thereof) that come into my possession, including documents or things that I prepare relating to this information, to outside counsel for the party by whom I am employed or retained or who has asked me to sign this agreement.
6. I submit to the jurisdiction of this Court for the purposes of enforcement of the Order in this action.

I declare under penalty of perjury under the laws of the State of _____ that the foregoing is true and correct.

STIPULATED MOTION FOR PROTECTIVE ORDER - 6

Case 1:12-cv-00416-BLW Document 28-1 Filed 12/21/12 Page 7 of 7

Executed on _____, 2012, at _____

Name and Title

STIPULATED MOTION FOR PROTECTIVE ORDER - 7

EXHIBIT J

Case 1:12-cv-00416-BLW Document 29 Filed 12/21/12 Page 1 of 5

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RUSSELL CASE, an individual, and
CASE CORPORATE COUNSEL, LLC, an
Idaho limited liability company,

Plaintiffs,

v.

TRIBE MOBILE, INC., a British Virgin
Islands corporations, VIRGIN MOBILE
LATIN AMERICA, INC., a British Virgin
Islands corporation, and DOES 1-15,
fictitiously named,

Defendants.

Case No. 1:12-cv-00416-BLW

**DEFENDANT VIRGIN MOBILE LATIN
AMERICA, INC.'S MEMORANDUM RE
STIPULATED PROTECTIVE ORDER**

Plaintiff Russell Case began working for Defendant Virgin Mobile Latin America, Inc. (formerly named, Tribe Mobile, Inc.) ("VMLA") as its in-house attorney in late 2010 and was its General Counsel from January 1, 2011, until his employment was terminated in conformity with his Employment Contract on November 26, 2011. As such, he was deeply involved in virtually all aspects of VMLA's business activities and was privy to much of VMLA's sensitive and

**DEFENDANT VIRGIN MOBILE LATIN AMERICA, INC.'S MEMORANDUM RE
STIPULATED PROTECTIVE ORDER- 1**

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confidential information—both that protected by the attorney-client privilege and professional obligation of confidentiality and trade secrets and competitively sensitive information.

Case has made it clear that he intends to use VMLA's privileged and confidential information to prosecute his claims. As discussed in VMLA's Memorandum (Dkt. No. 24) opposing Case's pending Motion to Unseal and Allow Disclosure of Matters Covered in Paragraphs 24 to 27 of the Amended Complaint (Dkt. No. 18) (the "Motion to Unseal"), I.R.P.C. 1.6(b)(5) allows disclosing otherwise-confidential information "to the extent the lawyer reasonably believes necessary" to "establish a claim ... on behalf of the lawyer in a controversy between the lawyer and client." If disclosure is reasonably necessary, it should only be within the confines of strict protective orders. I.R.P.C. 1.6, cmt. 14. If it is not reasonably necessary, it should not be disclosed at all. *See Morris v. Slappy*, 461 U.S. 1, 21 (1983).

Given the scope of Case's involvement in VMLA's commercial endeavors, it is likely that litigation of his claims may also call for the disclosure of trade secrets and commercially sensitive information.

The parties have therefore agreed to a Stipulated Protective Order to facilitate discovery going forward. Most recently, only two points of disagreement have remained. The first concerned one party providing each of its experts' signed confidentiality agreements to its opponent. Case did not want this to apply to consultants and nontestifying experts, and VMLA conceded the point. Attached hereto as Exhibit A is a copy of a proposed Stipulated Protective Order incorporating this and the parties' prior agreements. (*See* ¶ 5 of the Exhibit).

The second disagreement remains unresolved. That is Case's insistence that the Stipulated Protected Order include the following statement: "Nothing contained herein shall in any way restrict a right or ability of any party to provide or disclose information to any

**DEFENDANT VIRGIN MOBILE LATIN AMERICA, INC.'S MEMORANDUM RE
STIPULATED PROTECTIVE ORDER - 2**

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governmental or regulatory authority.”

The utility of this statement in a Protective Order designed to facilitate discovery within the professional confines of I.R.P.C. 1.6 is not readily apparent. However, Case’s litigation of his claims has made it clear that, although the bulk of those claims concern the performance of just three terms in his Employment Contract, he has and will continue to emphasize alleged duties of disclosure he conceives VMLA owed third-party investors regarding an internal disagreement over its Chairman’s prospective contract rights. To this end, Case portrays himself as having been the champion of VMLA’s legal duties when he advised his client to publicize this internal dispute, but then was wrongfully discharged because of that advice. He has thus consistently brandished the disclosures contemplated by “securities laws” and those “required or protected” by laws and rules under the SEC’s jurisdiction to support his wrongful termination for violation of public policy and Dodd-Frank claims, respectively.

Although all the facts were known to Case more than a year ago, he has never “provide[d] or disclose[d] information to any governmental or regulatory authority,” or shown any intention of doing so. To the contrary, he has kept everything he knows to himself, now revealing it only to serve his own litigation ends. Moreover, any disclosure by Case of anything to any governmental or regulatory authorities now or at any time during this litigation cannot possibly have any causal relationship to the fact of his dismissal in November 2011. The sentence he insists on is just more posturing.

The parties are agreed on a Stipulated Protective Order that contains all that is needed to let it work fairly for the purposes of this litigation. If it is later determined that information disclosed and marked as “Confidential” is not entitled to such continuing protection, then that information will be in the public record. Conversely, if privileged or otherwise protected

**DEFENDANT VIRGIN MOBILE LATIN AMERICA, INC.’S MEMORANDUM RE
STIPULATED PROTECTIVE ORDER - 3**

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Case 1:12-cv-00416-BLW Document 29 Filed 12/21/12 Page 4 of 5

information is nevertheless subject to a superseding legal duty of disclosure to a “governmental or regulatory authority,” the party charged with that duty must comply with the law and make such disclosure. In either event, the Protective Order should not be the vehicle of an implicit acknowledgment that such a duty exists or is a possibility and that some kind of prospective approval has been accorded the party making such disclosure, especially if it turns out to have been unwarranted after all.

Case’s proposed sentence should be rejected and a Protective Order entered in the form attached hereto as Exhibit A.

DATED: December 21, 2012.

STOEL RIVES LLP

/s/ Mark S. Geston

James C. Dale

Mark S. Geston

Elijah M. Watkins

Attorneys for Defendants

**DEFENDANT VIRGIN MOBILE LATIN AMERICA, INC.’S MEMORANDUM RE
STIPULATED PROTECTIVE ORDER - 4**

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Case 1:12-cv-00416-BLW Document 29 Filed 12/21/12 Page 5 of 5

CERTIFICATE OF SERVICE

I certify that on December 21, 2012, I served a copy of the foregoing **DEFENDANT VIRGIN MOBILE LATIN AMERICA, INC.'S MEMORANDUM RE STIPULATED PROTECTIVE ORDER** on CM/ECF Registered Participants as reflected on the Notice of Electronic Filing as follows:

Briane Nelson Mitchell – *nels@maukburgoyne.com*

Attorney for Plaintiffs

Mark S. Geston
James C. Dale
Mark S. Geston

**DEFENDANT VIRGIN MOBILE LATIN AMERICA, INC.'S MEMORANDUM RE
STIPULATED PROTECTIVE ORDER - 5**

73151622.1 0047371-00001

Case 1:12-cv-00416-BLW Document 29-1 Filed 12/21/12 Page 1 of 8

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RUSSELL CASE, an individual, and CASE
CORPORATE COUNSEL, LLC, an Idaho
limited liability company,

Plaintiffs,

v.

TRIBE MOBILE, INC., a British Virgin
Islands corporations, VIRGIN MOBILE
LATIN AMERICA, INC., a British Virgin
Islands corporation, and DOES 1-15,
fictitiously named,

Defendants.

Case No. 1:12-cv-00416

**STIPULATED MOTION FOR
PROTECTIVE ORDER**

WHEREAS, to protect information that a party hereto deems to be proprietary,
confidential, constitutes trade secrets, or is subject to other claims of privilege or protection, but
to still permit discovery and pretrial litigation to move forward in an orderly manner, the parties
hereto stipulate and agree that the Court may enter a Protective Order in the following
particulars:

STIPULATED MOTION FOR PROTECTIVE ORDER - 1

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1. Any party to this litigation may, at its discretion and pursuant to Fed. R. Civ. P. 26(c), file privileged, protected, or confidential information with the Court under seal without individual compliance with Dist. Idaho Loc. Civ. R. 5.3, and may similarly file pleadings, motions, briefs, and affidavits specifically dealing with such privileged, protected, and confidential information with the Court under seal. Each such matter shall be filed in a sealed envelope marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," and the Clerk of the Court shall segregate such filings and not permit public access to them.

2. Privileged, protected, or confidential information produced in the course of discovery may be labeled "CONFIDENTIAL" by the producing party and the recipient party shall maintain all information so produced in confidence as set forth herein.

3. Information subject to claims of privilege, confidentiality, or other protection which is discussed or made an exhibit to the record at depositions shall, at the request of any party, accompany the transcripts thereof in sealed envelopes marked "CONFIDENTIAL." Additionally, any party to such a deposition may designate testimony concerning such information as confidential, and the reporter shall be instructed to segregate the designated testimony in a separate transcript to be kept in a sealed envelope that identifies the contents thereof as "CONFIDENTIAL." Furthermore, any party to a deposition may demand that no information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, be shown to or discussed with a non-party deponent unless the deponent first agrees on the record of the deposition to keep all such information first learned at the deposition in confidence subject to the terms of this Stipulation and the Protective Order entered pursuant hereto.

STIPULATED MOTION FOR PROTECTIVE ORDER - 2

72483929.3 0047371-00001

4. Information designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” if filed with the court or “CONFIDENTIAL” if produced in response to discovery, and any memoranda, analyses or reports discussing, summarizing, or otherwise concerning such information may be made available only to the Court, court reporters, the parties, counsel for the parties (and such counsel’s paralegals, legal assistants, and clerical personnel), and expert witnesses retained by a party to this litigation for the purposes of this litigation.

5. Expert witnesses, as identified in the preceding paragraph, shall be entitled to review information designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” if filed with the court or “CONFIDENTIAL” if produced in response to discovery, only after agreeing to be bound by the terms of this Stipulation and the Protective Order entered in connection herewith, by executing a Confidentiality Agreement in the form attached hereto as Exhibit A. The party obtaining such agreement and permitting such expert witness access to protected information shall retain such agreement during the pendency of this litigation and for a period of six months following its conclusion. Any other party this litigation shall be entitled to receive a copy of the confidentiality agreement signed by a testifying expert prior to such expert’s testimony or submission of his or her report under Fed. R. Civ. P. 26(a)(2)(A) and (B). Execution of any such agreement shall not waive or affect any obligation or protection accorded experts, whether testifying or non-testifying, by Fed. R. Civ. P. 26.

6. Information designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” if filed with the court, or “CONFIDENTIAL” if produced in response to discovery, shall not be used at trial or any other public hearing unless and to the extent that the parties previously agree to such use or the Court previously determines that information so designated is not, either in whole or in part, entitled to continuing protection from public disclosure.

STIPULATED MOTION FOR PROTECTIVE ORDER - 3

72483929.3 0047371-00001

Case 1:12-cv-00416-BLW Document 29-1 Filed 12/21/12 Page 4 of 8

7. Anything to the contrary herein notwithstanding, any party may ask the Court for relief from any of the restrictions and limitations herein or in the resultant protective order, or to impose other and additional restrictions on the production, use, and/or dissemination of privileged, confidential or otherwise protected information. In the event of such request to the Court, the burden of justifying the subject evidence's entitlement to protection hereunder shall be upon the party seeking to maintain the confidentiality of such evidence.

8. Unless otherwise ordered by the Court, within thirty (30) days after the conclusion of this litigation, information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL," and all copies and reproductions thereof, except those filed with the Court, shall be returned to the producing party—or in the case of copies bearing any attorney's notes or the like, shall be destroyed. All memoranda, analyses, or reports prepared by any expert witness dealing with any of the specifics of such documents or information shall be similarly destroyed. However, counsel for any party shall be permitted to retain one copy of such information as was filed with the Court for the purpose of their own record keeping only.

9. The parties have agreed to this Stipulation to facilitate discovery. Neither the entry of a Protective Order pursuant to this Stipulation nor the filing or disclosure of any information designated as "CONFIDENTIAL" or "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," nor the failure to make such designation or filing, shall constitute evidence relevant to any issue in this action and shall not constitute any waiver regarding the relevancy or admissibility of information.

STIPULATED MOTION FOR PROTECTIVE ORDER - 4

72483929,3 0047371-00001

Case 1:12-cv-00416-BLW Document 29-1 Filed 12/21/12 Page 5 of 8

10. The provisions of this Stipulation and the resultant protective order shall continue to be binding through and after the conclusion of this litigation in any forum unless the parties agree or the Court orders otherwise.

11. Nothing contained herein shall restrict the use by any party of its own information.

DATED: September ____, 2012.

STOEL RIVES LLP

James C. Dale
Mark S. Geston
Attorneys for Defendants

DATED: September ____, 2012.

MAUK & BURGOYNE,

Briane Nelson Mitchell
Attorney for Plaintiffs

STIPULATED MOTION FOR PROTECTIVE ORDER - 5

72483929.3 0047371-00001

Case 1:12-cv-00416-BLW Document 29-1 Filed 12/21/12 Page 6 of 8

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September 2012, I served a true and correct copy of **STIPULATED MOTION FOR PROTECTIVE ORDER** in the above-entitled matter as follows:

Briane Nelson Mitchell – *nels@maukburgoyne.com*

Attorney for Plaintiffs

James C. Dale
Mark S. Geston

Attorneys for Defendants

STIPULATED MOTION FOR PROTECTIVE ORDER - 6

72483929.3 0047371-00001

Case 1:12-cv-00416-BLW Document 29-1 Filed 12/21/12 Page 7 of 8

DECLARATION RE AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

Russell Case, et al. vs. Tribe Mobile, Inc., et al.

U.S.D.C. Case No. 1:12-cv-00416

I, _____, declare as follows:

1. My address is _____
2. I am presently employed as _____ by _____
3. I have received a copy of the Stipulated Protective Order entered in the above action on _____ (the "Order"). I have carefully read and understand the provisions of the Order, and will comply with all of its provisions.
4. I will hold in confidence, will not disclose to anyone not qualified under the Order to receive such document, testimony, information or physical object (or portion thereof), will use only for permitted purposes, and will not use for any business or competitive purpose apart from this litigation, any "CONFIDENTIAL" document, testimony, information or physical object (or portion thereof) that is disclosed to me.
5. I will return all "CONFIDENTIAL" documents, testimony, information or physical objects (or portion thereof) that come into my possession, including documents or things that I prepare relating to this information, to outside counsel for the party by whom I am employed or retained or who has asked me to sign this agreement.
6. I submit to the jurisdiction of this Court for the purposes of enforcement of the Order in this action.

I declare under penalty of perjury under the laws of the State of _____ that the foregoing is true and correct.

STIPULATED MOTION FOR PROTECTIVE ORDER - 7

72483929.3 0047371-00001

Case 1:12-cv-00416-BLW Document 29-1 Filed 12/21/12 Page 8 of 8

Executed on _____, 2012, at _____.

Name and Title

STIPULATED MOTION FOR PROTECTIVE ORDER - 8

72483929.3 0047371-00001

EXHIBIT K

Case 1:12-cv-00416-BLW Document 36 Filed 01/14/13 Page 1 of 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

RUSSELL CASE, an individual, and
CASE CORPORATE COUNSEL, LLC, an
Idaho limited liability company,

Plaintiffs,

v.

TRIBE MOBILE, INC., a British Virgin
Islands corporations, VIRGIN MOBILE
LATIN AMERICA, INC., a British Virgin
Islands corporation, and DOES 1-15,
fictitiously named,

Defendants.

Case No. 1:12-cv-00416-BLW

PROTECTIVE ORDER

The parties' Stipulated Motion for Protective Order (Dkt. No. 35) is **GRANTED**. Good cause appearing, IT IS HEREBY ORDERED:

1. Any party to this litigation may, at its discretion and pursuant to Fed. R. Civ. P. 26(c), file privileged, protected, or confidential information with the Court under seal without individual compliance with Dist. Idaho Loc. Civ. R. 5.3, and may similarly file pleadings, motions, briefs, and affidavits specifically dealing with such privileged, protected, and confidential information with the Court under seal. Each such matter shall be filed in a sealed envelope marked "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," and the Clerk of the Court shall segregate such filings and not permit public access to them.

2. Privileged, protected, or confidential information produced in the course of discovery may be labeled "CONFIDENTIAL" by the producing party and the recipient party shall maintain all information so produced in confidence as set forth herein.

3. Information subject to claims of privilege, confidentiality, or other protection which is discussed or made an exhibit to the record at depositions shall, at the request of any party, accompany the transcripts thereof in sealed envelopes marked "CONFIDENTIAL." Additionally, any party to such a deposition may designate testimony concerning such information as confidential, and the reporter shall be instructed to segregate the designated testimony in a separate transcript to be kept in a sealed envelope that identifies the contents thereof as "CONFIDENTIAL." Furthermore, any party to a deposition may demand that no information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, be shown to or discussed with a non-party deponent unless the deponent first agrees on the record of the deposition to keep all such information first learned at the deposition in confidence subject to the terms of the Stipulation (Dkt. No. 35) and this Protective Order.

4. Information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, and any memoranda, analyses or reports discussing, summarizing, or otherwise concerning such information may be made available only to the Court, court reporters, the parties, counsel for the parties (and such counsel's paralegals, legal assistants, and clerical personnel), deponents (in conformity with the preceding paragraph), and expert witnesses retained by a party to this litigation for the purposes of this litigation.

5. Expert witnesses, as identified in the preceding paragraph, shall be entitled to review information designated as "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" if filed with the court or "CONFIDENTIAL" if produced in response to discovery, only after

agreeing to be bound by the terms of the Stipulation (Dkt. No. 35) and this Protective Order, by executing a Confidentiality Agreement in the form attached hereto as Exhibit A.

6. Information designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” if filed with the court, or “CONFIDENTIAL” if produced in response to discovery, shall not be used at trial or any other public hearing unless and to the extent that the parties previously agree to such use or the Court previously determines that information so designated is not, either in whole or in part, entitled to continuing protection from public disclosure.

7. Anything to the contrary herein notwithstanding, any party may ask the Court for relief from any of the restrictions and limitations herein, or to impose other and additional restrictions on the production, use, and/or dissemination of privileged, confidential or otherwise protected information. In the event of such request to the Court, the burden of justifying the subject evidence’s entitlement to protection hereunder shall be upon the party seeking to maintain the confidentiality of such evidence.

8. Unless otherwise ordered by the Court, within thirty (30) days after the conclusion of this litigation, information designated as “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” or “CONFIDENTIAL,” and all copies and reproductions thereof, except those filed with the Court, shall be returned to the producing party —or in the case of copies bearing any attorney’s notes or the like, shall be destroyed. All memoranda, analyses, or reports prepared by any expert witness dealing with any of the specifics of such documents or information shall be similarly destroyed. However, counsel for any party shall be permitted to retain one copy of such information as was filed with the Court for the purpose of their own record keeping only.

Case 1:12-cv-00416-BLW Document 36 Filed 01/14/13 Page 4 of 6

9. The parties have agreed to this Protective Order to facilitate discovery. Neither the entry of this Protective Order pursuant to said Stipulation (Dkt. No. 35) nor the filing or disclosure of any information designated as "CONFIDENTIAL" or "CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER," nor the failure to make such designation or filing, shall constitute evidence relevant to any issue in this action and shall not constitute any waiver regarding the relevancy or admissibility of information.

10. This Protective Order shall continue to be binding through and after the conclusion of this litigation in any forum unless the parties agree or the Court orders otherwise.

11. Nothing contained herein shall restrict the use by any party of its own information.

12. Nothing contained herein shall in any way restrict a right or ability of any party to provide or disclose information to any governmental or regulatory authority where legally required to do so.



DATED: January 14, 2013

B. Lynn Winmill

B. Lynn Winmill
Chief Judge
United States District Court

DECLARATION RE AGREEMENT TO COMPLY WITH PROTECTIVE ORDER

Russell Case, et al. vs. Tribe Mobile, Inc., et al.

U.S.D.C. Case No. 1:12-cv-00416

I, _____, declare as follows:

1. My address is _____
2. I am presently employed as _____ by _____
3. I have received a copy of the Stipulated Protective Order entered in the above action on _____ (the "Order"). I have carefully read and understand the provisions of the Order, and will comply with all of its provisions.
4. I will hold in confidence, will not disclose to anyone not qualified under the Order to receive such document, testimony, information or physical object (or portion thereof), will use only for permitted purposes, and will not use for any business or competitive purpose apart from this litigation, any "CONFIDENTIAL" document, testimony, information or physical object (or portion thereof) that is disclosed to me.
5. I will return all "CONFIDENTIAL" documents, testimony, information or physical objects (or portion thereof) that come into my possession, including documents or things that I prepare relating to this information, to outside counsel for the party by whom I am employed or retained or who has asked me to sign this agreement.
6. I submit to the jurisdiction of this Court for the purposes of enforcement of the Order in this action.

I declare under penalty of perjury under the laws of the State of _____ that the foregoing is true and correct.

Case 1:12-cv-00416-BLW Document 36 Filed 01/14/13 Page 6 of 6

Executed on _____, 2013, at _____.

Name and Title